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American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

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West's Key Number Digest

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7A Am. Jur. 2d Automobiles § 1

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Automobiles and Highway Traffic

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I. In General

A. Definitions and Distinctions

§ 1. Automobile

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 1

The word “automobile” expresses its own meaning,¹ and generally it is to be taken and understood in its ordinary and popular sense.² Basically, an automobile is a self-propelled vehicle which does not run upon fixed rails or tracks.³ Some definitions add the further requirement that the vehicle be designed for carrying persons or property on a highway.⁴ A further defining feature has been the number of wheels, it being said that to the average person and to the public mind it is common knowledge that the word “automobile” indicates a motor-driven vehicle mounted on four wheels.⁵

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Footnotes

- 1 [Mittelsteadt v. Bovee](#), 9 Wis. 2d 44, 100 N.W.2d 376, 74 A.L.R.2d 1259 (1960).
As to the meaning of “automobile” or “motor vehicle” for purposes of an automobile liability insurer’s coverage, see [Am. Jur. 2d, Automobile Insurance](#) §§ 191 to 219.
As to the meaning of “automobile” for no-fault insurance purposes, see [Am. Jur. 2d, Automobile Insurance](#) § 353.
- 2 [Jernigan v. Hanover Fire Ins. Co. of N. Y.](#), 235 N.C. 334, 69 S.E.2d 847 (1952).
- 3 [In re Fall](#), 192 B.R. 16 (Bankr. D. N.H. 1995) (applying New Hampshire law); [National Cas. Co. v. Thompson](#), 39 Ala. App. 199, 96 So. 2d 708 (1957); [Merrill v. Packard](#), 395 So. 2d 285 (Fla. 3d DCA 1981).
- 4 [In re Fall](#), 192 B.R. 16 (Bankr. D. N.H. 1995); [Merrill v. Packard](#), 395 So. 2d 285 (Fla. 3d DCA 1981); [Jernigan v. Hanover Fire Ins. Co. of N. Y.](#), 235 N.C. 334, 69 S.E.2d 847 (1952).
- 5 [Mittelsteadt v. Bovee](#), 9 Wis. 2d 44, 100 N.W.2d 376, 74 A.L.R.2d 1259 (1960).

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7A Am. Jur. 2d Automobiles § 2

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Automobiles and Highway Traffic

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I. In General

A. Definitions and Distinctions

§ 2. Motor vehicles

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West's Key Number Digest

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A.L.R. Library

[What is “motor vehicle” within automobile guest statute, 98 A.L.R.2d 543](#)

A motor vehicle has been generally defined as every vehicle operated or driven upon a public highway which is propelled by power other than muscular power.¹ It is an automobile, truck, bus, or similar motor-driven conveyance.² However, “motor vehicle” is a broad term that has no universally accepted meaning.³ It has been considered to be much broader than the word “automobile,” and to include various vehicles which cannot be classified as automobiles.⁴

A motor vehicle must be self-propelled⁵ and must not operate on tracks or rails.⁶ Some jurisdictions exclude vehicles powered by human or animal power.⁷

The term motor vehicle necessarily excludes trains⁸ or subways,⁹ but may either include¹⁰ or exclude trackless trolleys.¹¹ Some jurisdictions limit the meaning of the phrase “motor vehicles” to transportation on land, not water¹² or air,¹³ although it has been held that a motorboat is a motor vehicle within the meaning of federal bankruptcy law.¹⁴

Some jurisdictions have a requirement that a vehicle, in order to be deemed a "motor vehicle," must have been designed for use upon a highway,¹⁵ or be commonly or generally used to transport persons and property over the public highways.¹⁶

The term motor vehicle has been held to include—

- a utility van.¹⁷
- an excavator operated in a solid waste transfer facility.¹⁸
- an all terrain vehicle.¹⁹
- an off-road recreation vehicle.²⁰
- a riding lawn mower.²¹
- an electric personal assistive mobility device.²²
- a motorized "pocket bike."²³

A golf cart may be considered a motor vehicle²⁴ if it is operated on the highways,²⁵ but not when it is driven on a golf course.²⁶

A motorized wheelchair or scooter has been held not to be a motor vehicle for purposes of a statute requiring the operators of certain motor vehicles, such as motorcycles and motortricycles, to wear protective helmets.²⁷

A truck, which is being towed by a motor home, is self-propelled, such that it is a "motor vehicle."²⁸

The phrase "self-propelled vehicle" contained in a motor vehicle code definition of "motor vehicle" does not exclude a motor vehicle that is not in good working order at the time it is brought to a recycler.²⁹

Observation:

A legislature can define motor vehicles one way for licensing requirements, and another way for infractions or financial responsibility.³⁰ Thus, what may be considered a motor vehicle for one statute may not be considered a motor vehicle for another.³¹

Whether a particular vehicle falls within a definition of a motor vehicle is normally a question of law.³²

- 2 Stanton v. City of Battle Creek, 466 Mich. 611, 647 N.W.2d 508 (2002).
3 Williams v. Radivoj, 111 B.R. 361 (S.D. Fla. 1989).
4 State v. Carpenter, 113 Idaho 882, 749 P.2d 501 (Ct. App. 1988); State v. Ridinger, 364 Mo. 684, 266 S.W.2d 626, 42 A.L.R.2d 617 (1954); Jernigan v. Hanover Fire Ins. Co. of N. Y., 235 N.C. 334, 69 S.E.2d 847 (1952); State v. Sohn, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).
As to what constitutes a “motor vehicle” within statutes making it an offense to drive while intoxicated or under the influence of alcohol, see § 342.
As to the meaning of “motor vehicle” for no-fault insurance purposes, see [Am. Jur. 2d, Automobile Insurance § 353](#).
5 Bills v. U.S. Fidelity & Guar. Co., 280 F.3d 1231 (9th Cir. 2002) (applying Arizona law); Nationwide Mut. Ins. Co. v. Worthey, 314 Ark. 185, 861 S.W.2d 307 (1993); Bertrand v. Board of County Com’rs of Park County, 872 P.2d 223 (Colo. 1994); Metal Management West, Inc. v. State, 251 P.3d 1164 (Colo. App. 2010); State v. Weyer, 831 N.E.2d 175 (Ind. Ct. App. 2005); State v. Thomas, 28 Kan. App. 2d 655, 20 P.3d 82 (2001); Mike Eskew Motor Co., Inc. v. Kelley, 583 So. 2d 95 (La. Ct. App. 3d Cir. 1991); Mull v. Equitable Life Assur. Soc. of U.S., 444 Mich. 508, 510 N.W.2d 184 (1994); State v. Otten, 2011 MT 83, 360 Mont. 144, 253 P.3d 834 (2011); State v. Richardson, 113 N.M. 740, 1992-NMCA-041, 832 P.2d 801 (Ct. App. 1992); State v. Heins, 72 Ohio St. 3d 504, 1995-Ohio-208, 651 N.E.2d 933 (1995); State v. Vasser, 870 S.W.2d 543 (Tenn. Crim. App. 1993); State v. Sohn, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).
6 City and County of Denver v. Gonzales, 17 P.3d 137 (Colo. 2001); State v. Kaiser, 2006 WL 2726836 (N.J. Super. Ct. App. Div. 2006); State v. Sohn, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).
7 State v. Delap, 237 Mont. 346, 772 P.2d 1268 (1989); County of Westchester v. Winstead, 231 A.D.2d 630, 647 N.Y.S.2d 536 (2d Dep’t 1996); Putka v. Parma, 90 Ohio App. 3d 647, 630 N.E.2d 380 (8th Dist. Cuyahoga County 1993); State v. McGary, 37 Wash. App. 856, 683 P.2d 1125 (Div. 1 1984).
8 Willson v. Cagle, 694 F. Supp. 713 (N.D. Cal. 1988).
9 People v. Cephas, 110 Misc. 2d 1075, 443 N.Y.S.2d 558 (Sup 1981).
10 Nationwide Mut. Ins. Co. v. Worthey, 314 Ark. 185, 861 S.W.2d 307 (1993); Mull v. Equitable Life Assur. Soc. of U.S., 444 Mich. 508, 510 N.W.2d 184 (1994); State v. Richardson, 113 N.M. 740, 1992-NMCA-041, 832 P.2d 801 (Ct. App. 1992); Lemon v. Federal Ins. Co., 111 Wis. 2d 563, 331 N.W.2d 379 (1983).
11 State v. Heins, 72 Ohio St. 3d 504, 1995-Ohio-208, 651 N.E.2d 933 (1995); Gallo v. J.C. Penney Cas. Ins. Co., 328 Pa. Super. 267, 476 A.2d 1322 (1984); State v. Vasser, 870 S.W.2d 543 (Tenn. Crim. App. 1993).
12 In re Fall, 192 B.R. 16 (Bankr. D. N.H. 1995) (applying New Hampshire law); State Farm Fire & Cas. Co. v. Berra, 891 S.W.2d 150 (Mo. Ct. App. E.D. 1995); Ozolins v. North Lake Community College, a Div. of Dallas County Community College Dist., 805 S.W.2d 614, 66 Ed. Law Rep. 852 (Tex. App. Fort Worth 1991); State v. Martin, 55 Wash. App. 275, 776 P.2d 1383 (Div. 1 1989).
13 General Aviation, Inc. v. Cessna Aircraft Co., 915 F.2d 1038, 14 U.C.C. Rep. Serv. 2d 73 (6th Cir. 1990); State v. Heins, 72 Ohio St. 3d 504, 1995-Ohio-208, 651 N.E.2d 933 (1995).
14 Willson v. Race, 192 B.R. 949 (W.D. Mo. 1995).
15 Gonzales v. City and County of Denver, 998 P.2d 51 (Colo. App. 1999), aff’d, 17 P.3d 137 (Colo. 2001); Mike Eskew Motor Co., Inc. v. Kelley, 583 So. 2d 95 (La. Ct. App. 3d Cir. 1991); Allstate Ins. Co. v. Department of Management & Budget, 259 Mich. App. 705, 675 N.W.2d 857 (2003); Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992); St. Louis Flying Club v. St. Louis County, 866 S.W.2d 929 (Mo. Ct. App. E.D. 1993).
16 Bertrand v. Board of County Com’rs of Park County, 872 P.2d 223 (Colo. 1994); Mike Eskew Motor Co., Inc. v. Kelley, 583 So. 2d 95 (La. Ct. App. 3d Cir. 1991); MacLean v. Hingham Mut. Fire Ins. Co., 51 Mass. App. Ct. 870, 750 N.E.2d 494 (2001); Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992); St. Louis Flying Club v. St. Louis County, 866 S.W.2d 929 (Mo. Ct. App. E.D. 1993); State v. Otten, 2011 MT 83, 360 Mont. 144, 253 P.3d 834 (2011).
17 State v. Vasser, 870 S.W.2d 543 (Tenn. Crim. App. 1993).
18 Martinez v. Hitachi Const. Machinery Co., Ltd., 15 Misc. 3d 244, 829 N.Y.S.2d 814 (Sup 2006).
19 State v. Weyer, 831 N.E.2d 175 (Ind. Ct. App. 2005); State v. Otten, 2011 MT 83, 360 Mont. 144, 253 P.3d 834 (2011) (four-wheeler).;
Com. v. Soldega, 80 Mass. App. Ct. 853, 957 N.E.2d 1113 (2011); State v. Cook, 2017 UT App 8, 2017 WL 128247 (Utah Ct. App. 2017).

- 20 Van Guilder v. Collier, 248 Mich. App. 633, 650 N.W.2d 340 (2001).
21 Stonger ex rel. Stonger v. Riggs, 85 S.W.3d 703 (Mo. Ct. App. W.D. 2002).
22 State v. Greenman, 825 N.W.2d 387 (Minn. Ct. App. 2013).
23 People v. Varela, 193 Cal. App. 4th 1216, 122 Cal. Rptr. 3d 829 (2d Dist. 2011), as modified, (Apr. 25, 2011).
24 Coker v. State, 261 Ga. App. 646, 583 S.E.2d 498 (2003); Case of Carey, 66 Mass. App. Ct. 749, 850 N.E.2d
610 (2006).
25 State v. Russell, 508 N.W.2d 697 (Iowa 1993).
26 Kenton County Public Parks Corp. v. Modlin, 901 S.W.2d 876 (Ky. Ct. App. 1995).
27 Burrell ex rel. Schatz v. O'Reilly Automotive, Inc., 175 S.W.3d 642 (Mo. Ct. App. S.D. 2005).
28 U.S. v. Bibbins, 637 F.3d 1087 (9th Cir. 2011) (applying Nevada law) (holding that since the truck was a
motor vehicle, the obstructing of the truck's license plate with a small garbage bag violated a state statute
that required every license plate be clearly visible and free from foreign materials).
29 Metal Management West, Inc. v. State, 251 P.3d 1164 (Colo. App. 2010).
30 State v. Meister, 849 So. 2d 1127 (Fla. 4th DCA 2003).
31 Mitchell v. Director of Revenue, 255 S.W.3d 12 (Mo. Ct. App. S.D. 2008).
32 State v. Eikleberry, 184 Ohio App. 3d 219, 2009-Ohio-3648, 920 N.E.2d 394 (9th Dist. Wayne County 2009).

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7A Am. Jur. 2d Automobiles § 3

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

A. Definitions and Distinctions

§ 3. Construction and farm equipment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  1

A.L.R. Library

What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, [27 A.L.R.4th 843](#)

In some jurisdictions, a front-end loader,¹ a bulldozer,² a cement pumper,³ a machine used for plowing sidewalks,⁴ and a boom lift⁵ have been determined to be motor vehicles. In other jurisdictions, a self-propelled crane,⁶ a wood chipper,⁷ a backhoe,⁸ and a livestock trailer⁹ have been found not to be motor vehicles. However, there is contrary authority holding that a backhoe is a motor vehicle.¹⁰

Some courts will look at how the equipment is being used, finding that if the equipment is being operated on the public highways to travel between jobs, it should be considered a motor vehicle.¹¹

While a forklift has been found not to be a motor vehicle,¹² under some statutes a forklift is included within the definition of motor vehicle.¹³

A road grader operated on a highway is a motor vehicle for purposes of some statutes.¹⁴ However, it has been held that a road grader is not a motor vehicle since it is not used primarily for the transportation of persons or property and is only incidentally operated or moved over the highways.¹⁵

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Footnotes

- 1 Marrero v. State, 921 So. 2d 748 (Fla. 5th DCA 2006).
- 2 General Aviation, Inc. v. Cessna Aircraft Co., 915 F.2d 1038, 14 U.C.C. Rep. Serv. 2d 73 (6th Cir. 1990) (applying Michigan law); Lambert v. Southern Counties Gas Co. of Cal., 52 Cal. 2d 347, 340 P.2d 608 (1959); Carter v. State, 2003 WL 1544216 (Tex. App. Dallas 2003).
- 3 Cleveland v. Gray, 153 Ohio App. 3d 322, 2003-Ohio-3539, 794 N.E.2d 85 (8th Dist. Cuyahoga County 2003).
- 4 County of Westchester v. Winstead, 231 A.D.2d 630, 647 N.Y.S.2d 536 (2d Dep't 1996).
- 5 State v. Smith, 190 Vt. 222, 2011 VT 83, 27 A.3d 362 (2011).
- 6 Crane Rental of Orlando, Inc. v. Hausman, 532 So. 2d 1057 (Fla. 1988); State v. Zeit, 39 Kan. App. 2d 364, 180 P.3d 1068 (2008).
- 7 Utility Equipment, Inc. v. Morbark Industries, Inc., 308 Or. 209, 779 P.2d 139 (1989).
- 8 M.J.S. v. State, 453 So. 2d 870 (Fla. 2d DCA 1984).
- 9 State v. Besancon, 188 Ohio App. 3d 141, 2010-Ohio-2147, 934 N.E.2d 962 (9th Dist. Wayne County 2010).
- 10 Murcin v. Mac Contracting, LLC, 101 A.D.3d 1764, 958 N.Y.S.2d 244 (4th Dep't 2012).
- 11 Putka v. Parma, 90 Ohio App. 3d 647, 630 N.E.2d 380 (8th Dist. Cuyahoga County 1993) (backhoe).
- 12 Stanton v. City of Battle Creek, 466 Mich. 611, 647 N.W.2d 508 (2002); Mangra v. China Airlines, Ltd., 7 Misc. 3d 499, 790 N.Y.S.2d 370 (N.Y. City Civ. Ct. 2005).
- 13 Drake-Lassie v. State Farm Ins. Cos., 129 Ohio App. 3d 781, 719 N.E.2d 64 (10th Dist. Franklin County 1998).
- 14 Bertrand v. Board of County Com'rs of Park County, 872 P.2d 223 (Colo. 1994).
- 15 Clark v. Randolph County, 71 Ark. App. 112, 36 S.W.3d 353 (2000).

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7A Am. Jur. 2d Automobiles § 4

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

A. Definitions and Distinctions

§ 4. Construction and farm equipment—Tractors

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  1

Some courts hold every tractor to be a motor vehicle,¹ while others hold that no tractor is a motor vehicle.² Still others hold that it depends on whether the tractor is being driven on the public roads,³ or whether the tractor is being operated as a motor vehicle,⁴ or whether the tractor was designed or manufactured to operate primarily on highways.⁵

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Footnotes

- 1 Harder v. Harder, 176 Mich. App. 589, 440 N.W.2d 53 (1989); State v. Richardson, 113 N.M. 740, 1992-NMCA-041, 832 P.2d 801 (Ct. App. 1992); Davis v. Gamble, 55 N.C. App. 617, 286 S.E.2d 629 (1982); State v. Sohn, 193 Wis. 2d 346, 535 N.W.2d 1 (Ct. App. 1995).
- 2 Cousins v. Dennis, 298 Ark. 310, 767 S.W.2d 296, 52 Ed. Law Rep. 1293 (1989); Great American Ins. Co. v. Golla, 493 N.W.2d 602 (Minn. Ct. App. 1992).
- 3 Heath v. Com., 761 S.W.2d 630 (Ky. Ct. App. 1988); People v. Canute, 8 A.D.3d 1125, 778 N.Y.S.2d 247 (4th Dep't 2004).
- 4 Regan v. Washtenaw County Road Com'rs, 257 Mich. App. 39, 667 N.W.2d 57 (2003).
- 5 Kastning v. State Farm Ins. Companies, 821 N.W.2d 621 (Minn. Ct. App. 2012).

7A Am. Jur. 2d Automobiles § 5

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

A. Definitions and Distinctions

§ 5. Inoperable vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 1

The definition of a “motor vehicle” in terms of a self-propelled vehicle is concerned with the design, mechanism, and construction of the vehicle rather than with its temporary condition, and a motor vehicle does not cease to be such merely because it is temporarily incapable of self-propulsion.¹

Thus, a vehicle that is equipped with and propelled by an engine is a motor vehicle even though it is temporarily disabled or inoperable.² However, an inoperable vehicle which is at no time drivable and whose owner lacks an immediate intention and ability to render the vehicle drivable or operable upon the public highway is not a motor vehicle.³

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Footnotes

¹ *State v. McGary*, 37 Wash. App. 856, 683 P.2d 1125 (Div. 1 1984).

² *Dupra v. Benoit*, 270 A.D.2d 856, 705 N.Y.S.2d 781 (4th Dep't 2000).

³ *People v. Carey*, 120 Misc. 2d 862, 466 N.Y.S.2d 887 (County Ct. 1983).

An immobilized car that was not running or roadworthy was not a motor vehicle. *Naranjo v. Southwest Independent School Dist.*, 777 S.W.2d 190, 56 Ed. Law Rep. 368 (Tex. App. San Antonio 1989), writ denied, (Apr. 18, 1990).

7A Am. Jur. 2d Automobiles § 6

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

A. Definitions and Distinctions

§ 6. Motorcycles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  1

A motorcycle is a motor vehicle,¹ but it is not an automobile.² However, there is authority holding that motorcycles are not "motor vehicles."³

By express provision, or by construction, motor vehicle acts in many jurisdictions embrace motorcycles, making the drivers thereof subject to the penalties prescribed for failure to comply with such motor vehicle regulations.⁴

A dirt bike is a motorcycle⁵ and may be considered a motor vehicle if it is operated on a public highway.⁶ Similarly, a minibike is a motorcycle.⁷ Also, a go-ped is a motorcycle.⁸

Observation:

A three-wheeled all-terrain vehicle is commonly considered a motorcycle⁹ and may be subject to motor vehicle laws when driven on the public roads.¹⁰ However, all-terrain vehicles are not considered motor vehicles where they are specifically exempted by statute.¹¹

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Footnotes

- 1 [In re Gosine](#), 454 B.R. 863 (Bankr. M.D. Fla. 2009) (applying Florida law); [Carner v. Farmers Ins. Co. of Arkansas](#), 3 Ark. App. 201, 623 S.W.2d 859 (1981); [City and County of Denver v. Gonzales](#), 17 P.3d 137 (Colo. 2001); [State v. Manchado](#), 968 So. 2d 115 (Fla. 4th DCA 2007); [Vasaio v. Department of Motor Vehicles](#), 42 Va. App. 190, 590 S.E.2d 596 (2004); [State v. McGary](#), 37 Wash. App. 856, 683 P.2d 1125 (Div. 1 1984).
- 2 [Katanik v. State Farm Mut. Auto. Ins. Co.](#), 8 Ohio App. 3d 76, 455 N.E.2d 1340 (8th Dist. Cuyahoga County 1982).
- 3 As to the definitions of automobile and motor vehicle, see §§ 1, 2.
- 4 [Perkins v. Auto-Owners Ins. Co.](#), 301 Mich. App. 658, 837 N.W.2d 32 (2013).
- 5 [Nationwide Mut. Ins. Co. v. Worthey](#), 314 Ark. 185, 861 S.W.2d 307 (1993); [State v. Rathburn](#), 5 Conn. Cir. Ct. 219, 249 A.2d 262 (1968); [People v. Devlin](#), 64 Misc. 2d 327, 314 N.Y.S.2d 670 (Dist. Ct. 1970); [Tipton v. Mullinix](#), 1973 OK 37, 508 P.2d 1072 (Okla. 1973).
- 6 [Guthrie v. State Farm Mut. Auto. Ins. Co.](#), 382 So. 2d 1312 (Fla. 4th DCA 1980); [Burdick v. Erie Ins. Group](#), 2008 PA Super 67, 946 A.2d 1106 (2008).
- 7 [Com., Dept. of Transp., Bureau of Driver Licensing v. Lear](#), 151 Pa. Commw. 138, 616 A.2d 185 (1992).
- 8 [Tyler v. Traveler's Ins. Co.](#), 110 Misc. 2d 471, 442 N.Y.S.2d 746 (Sup 1981).
- 9 [Cruz v. Trotta](#), 363 N.J. Super. 353, 833 A.2d 72 (App. Div. 2003).
- 10 [Nationwide Mut. Ins. Co. v. Riccadulli](#), 183 A.D.2d 111, 589 N.Y.S.2d 356 (2d Dep't 1992); [Pelter v. Com., Dept. of Transp., Bureau of Driver Licensing](#), 663 A.2d 844 (Pa. Commw. Ct. 1995) (under uninsured motorist provision of automobile liability insurance policy).
- 11 [State v. Benolken](#), 838 P.2d 280 (Alaska Ct. App. 1992).
- 11 [Guay v. New York Cent. Mut. Fire Ins. Co.](#), 144 Misc. 2d 785, 545 N.Y.S.2d 265 (Sup 1989).

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7A Am. Jur. 2d Automobiles § 7

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

A. Definitions and Distinctions

§ 7. Trailers and mobile homes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 1

A.L.R. Library

[Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016](#)

In some jurisdictions, trailers or other vehicles intended to be drawn on the highway are considered motor vehicles even though they are not self-propelled.¹ In other jurisdictions, because a trailer is not self-propelled it is not deemed to be a motor vehicle.² According to some authority, a trailer is a vehicle, but not a motor vehicle.³

Distinction:

A distinction has been made between trailers and semitrailers, the latter not being considered a motor vehicle because its weight rests on the towing vehicle.⁴

While a mobile home may initially be considered a motor vehicle, once it becomes permanently attached to the land it is treated like realty and is no longer considered a motor vehicle.⁵ A mobile home without motor power is not a motor vehicle.⁶ Similarly, the house portion of a motor home is not a motor vehicle.⁷ The middle segment of a three-segment manufactured home, which middle segment had a nondetachable undercarriage to facilitate transportation, and which middle segment was transported by a trucking contractor hired by the company which purchased the home from the manufacturer for eventual resale, is not a "trailer" and therefore is not a motor vehicle.⁸ A trailer attached to a tractor is not a motor vehicle.⁹

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Footnotes

- 1 [In re Meade](#), 174 B.R. 49 (Bankr. M.D. N.C. 1994) (applying North Carolina law); [Great American Ins. Co. v. Golla](#), 493 N.W.2d 602 (Minn. Ct. App. 1992); [State v. Poncelet](#), 463 N.W.2d 673 (S.D. 1990) (disk plow); [Matter of J.T., Jr.](#), 824 S.W.2d 671 (Tex. App. Fort Worth 1992), writ denied, (May 20, 1992).
- 2 [U.S. v. A Single Story Double Wide Trailer](#), 727 F. Supp. 149 (D. Del. 1989) (applying Delaware law); [Vee v. Ibrahim](#), 769 N.W.2d 770 (Minn. Ct. App. 2009) (semitrailer); [Newman v. Basin Motor Co.](#), 98 N.M. 39, 1982-NMCA-074, 644 P.2d 553, 34 U.C.C. Rep. Serv. 354 (Ct. App. 1982).
- 3 [LePage v. Babcock](#), 839 A.2d 1226 (R.I. 2004).
- 4 [Arrigo's Fleet Service, Inc. v. State of Mich.](#), Dept. of State, Bureau of Automotive Regulations, 125 Mich. App. 790, 337 N.W.2d 26 (1983).
- 5 [In re Washington](#), 837 F.2d 455 (11th Cir. 1988) (applying Georgia law); [Gelormino v. Board of Assessment Appeals of Armstrong County](#), 986 A.2d 222 (Pa. Commw. Ct. 2009).
- 6 [Newman v. Basin Motor Co.](#), 98 N.M. 39, 1982-NMCA-074, 644 P.2d 553, 34 U.C.C. Rep. Serv. 354 (Ct. App. 1982).
- 7 [Pidcock v. Ewing](#), 371 F. Supp. 2d 870, 58 U.C.C. Rep. Serv. 2d 129 (E.D. Mich. 2005) (applying Michigan law).
- 8 [King v. Liberty Homes, Inc.](#), 508 F. Supp. 2d 730 (D. Minn. 2007) (applying Minnesota law).
- 9 [Zimmer v. Vander Waal](#), 780 N.W.2d 730 (Iowa 2010).

7A Am. Jur. 2d Automobiles § 8

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

A. Definitions and Distinctions

§ 8. Bicycles and mopeds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  1

A.L.R. Library

[Operation of bicycle as within drunk driving statutes, 73 A.L.R.4th 1139](#)

While it has been held that bicycles are vehicles,¹ it has also been held that a bicycle is not a vehicle.² Bicycles are generally subject to the same regulation as motor vehicles, with certain express limitations.³ For example, a bicycle that a defendant was operating while intoxicated is a "vehicle" under a statute criminalizing the operation of a vehicle while under the influence of alcohol (DUI).⁴

A moped is a bicycle designed to be operated by human power with the assistance of a motor.⁵ While it has been held that a moped is not a motor vehicle,⁶ it has also been held that a moped is a vehicle,⁷ at least for purposes of the prohibition against driving while intoxicated.⁸

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Footnotes

- 1 Borromeo v. Shea, 138 Wash. App. 290, 156 P.3d 946 (Div. 1 2007).
2 Kendrick v. Manda, 38 Kan. App. 2d 864, 174 P.3d 432 (2008).
3 U.S. v. Dotson, 34 F.3d 882, 32 A.L.R.5th 875 (9th Cir. 1994) (applying Washington law); Lewis v.
Brumbles, 83 N.C. App. 90, 349 S.E.2d 323 (1986).
4 Everton v. District of Columbia, 993 A.2d 595 (D.C. 2010); City of Lincoln v. Johnston, 2012 ND 139, 818
N.W.2d 778 (N.D. 2012); State v. Abbey, 239 Or. App. 306, 245 P.3d 152 (2010).
5 Crespo v. Topi, 154 Md. App. 391, 840 A.2d 156 (2003).
6 Crespo v. Topi, 154 Md. App. 391, 840 A.2d 156 (2003).
7 Jones v. State, 721 So. 2d 320 (Fla. 2d DCA 1998).
8 State v. Saiz, 130 N.M. 333, 2001-NMCA-035, 24 P.3d 365 (Ct. App. 2001).

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7A Am. Jur. 2d Automobiles § 9

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Automobiles and Highway Traffic

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I. In General

A. Definitions and Distinctions

§ 9. Snowmobiles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Liability for Injury or Death Resulting from Use or Operation of Snowmobile, 98 A.L.R.6th 231](#)
[Snowmobile operation as DWI or DUI, 56 A.L.R.4th 1092](#)

Trial Strategy

[Avoiding the Effect of a Recreational Activity Liability Release, 154 Am. Jur. Proof of Facts 3d 89](#)
[Proof of Negligence Causing Snowmobile Accident and Resulting Injuries, 62 Am. Jur. Proof of Facts 3d 447](#)
[Liability of Ski Area Operator for Skiing Accident, 45 Am. Jur. Proof of Facts 3d 115](#)
[Assumption of Risk Defense in Sports or Recreation Injury Cases, 30 Am. Jur. Proof of Facts 3d 161](#)
[Defective Design of An All-Terrain Vehicle, 6 Am. Jur. Proof of Facts 3d 93](#)
[Negligent Operation of Motorcycle, 47 Am. Jur. Proof of Facts 2d 127](#)
[Driver's Failure to Maintain Proper Lookout, 40 Am. Jur. Proof of Facts 2d 411](#)

Public Authority's Failure to Remove or Guard Against Ice or Snow on Surface of Highway or Street, 21 Am. Jur. Proof of Facts 2d 299

Forms

Forms regarding motorcyclists, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [Westlaw®(r) Search Query]

A snowmobile is a self-propelled vehicle designed primarily for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts, or cleats.¹ Snowmobiles are not generally considered motor vehicles, because they are separately regulated and not intended to be operated on the highways.² However, under some statutes, the definition of "motor vehicle" includes a snowmobile.³ In some jurisdictions, when snowmobiles are operated on the public roads, as opposed to snowmobile trails, they are considered motor vehicles,⁴ while other jurisdictions hold that they are not subject to motor vehicle regulation even when operated on the public roads.⁵

Observation:

Riding a towed snowmobile with limited steering ability constitutes operating a motor vehicle.⁶

CUMULATIVE SUPPLEMENT

Cases:

Issue of whether a snowmobile was a motor vehicle for purposes of statute proscribing theft of motor vehicles, under which defendant had previously been convicted for conduct involving snowmobile, did not raise issue of constitutional facial validity and thus was not an issue that sentencing court could determine in instant case, in which defendant argued prior conviction was invalid and thus should not be used in calculating offender score. *Wash. Rev. Code Ann. § 9A.56.065. State v. Blair*, 421 P.3d 937 (Wash. 2018).

[END OF SUPPLEMENT]

Footnotes

- 1 State v. Delap, 237 Mont. 346, 772 P.2d 1268 (1989); State v. Eden, 108 N.M. 737, 1989-NMCA-038, 779 P.2d 114 (Ct. App. 1989).
- 2 People v. Staton, 248 Ill. App. 3d 799, 189 Ill. Dec. 76, 619 N.E.2d 777 (2d Dist. 1993); State v. Gobeli, 342 N.W.2d 898 (Iowa Ct. App. 1983); State v. Senko, 457 A.2d 824 (Me. 1983); Melby v. Commissioner of Public Safety, 367 N.W.2d 527, 56 A.L.R.4th 1085 (Minn. 1985); State v. Delap, 237 Mont. 346, 772 P.2d 1268 (1989); State v. Eden, 108 N.M. 737, 1989-NMCA-038, 779 P.2d 114 (Ct. App. 1989); People v. Davis, 178 A.D.2d 714, 576 N.Y.S.2d 947 (3d Dep't 1991).
- 3 State v. Snyder, 634 N.W.2d 613 (Iowa 2001).
- 4 People v. Rogers, 438 Mich. 602, 475 N.W.2d 717 (1991); Melby v. Commissioner of Public Safety, 367 N.W.2d 527, 56 A.L.R.4th 1085 (Minn. 1985); Gallo v. J.C. Penney Cas. Ins. Co., 328 Pa. Super. 267, 476 A.2d 1322 (1984).
- 5 State v. Gobeli, 342 N.W.2d 898 (Iowa Ct. App. 1983); State v. Delap, 237 Mont. 346, 772 P.2d 1268 (1989).
- 6 Conkey v. State, Dept. of Admin., Div. of Motor Vehicles, 113 P.3d 1235 (Alaska 2005).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

B. Rights to Use Highways

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  4

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A.L.R. Index, Automobiles and Highway Traffic

West's A.L.R. Digest, Automobiles  4

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7A Am. Jur. 2d Automobiles § 10

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I. In General

B. Rights to Use Highways

§ 10. Rights to use highways, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 4

Ordinarily, every traveler has an equal right in the highway, and every part thereof, with every other traveler.¹ The right to use public highways rests with the whole people of the state,² and the public is entitled to the full and free use of all the territory embraced within a public roadway.³ Hence, a traveler, as such, may occupy and use any part of the public highway he or she desires, when not needed by another whose rights thereto are superior to his or her own.⁴

A person's right and liberty to use a highway is not absolute; it may be regulated in the public interest through reasonable and reasonably executed regulations.⁵

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Footnotes

- 1 Grommet v. St. Louis County, 680 S.W.2d 246, 22 Ed. Law Rep. 578 (Mo. Ct. App. E.D. 1984); Work v. Philadelphia Supply Co., 95 N.J.L. 193, 112 A. 185 (N.J. Ct. Err. & App. 1920).
- 2 New York State Public Employees Federation, AFL-CIO v. City of Albany, 269 A.D.2d 707, 703 N.Y.S.2d 573 (3d Dep't 2000).
- 3 Grommet v. St. Louis County, 680 S.W.2d 246, 22 Ed. Law Rep. 578 (Mo. Ct. App. E.D. 1984).
- 4 Hatzakorzian v. Rucker-Fuller Desk Co., 197 Cal. 82, 239 P. 709, 41 A.L.R. 1027 (1925); Jeffords v. Florence County, 165 S.C. 15, 162 S.E. 574, 81 A.L.R. 313 (1932).
As to use of way, generally, see Am. Jur. 2d, Highways, Streets, and Bridges §§ 227 to 334.
- 5 Chandler v. Secretary of Florida Dept. of Transp., 695 F.3d 1194 (11th Cir. 2012) (applying Florida law).

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I. In General

B. Rights to Use Highways

§ 11. Motor vehicles, generally

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West's Key Number Digest

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A.L.R. Library

[What Constitutes “Use” or “Operation” Within Statute Making Owner of Motor Vehicle Liable for Negligence in its Use or Operation, 103 A.L.R.5th 339](#)

The operation of a motor vehicle upon the public highways is not a fundamental right, but only a privilege.¹

Observation:

Because the right to operate a motor vehicle is not a fundamental one, the state must show only a legitimate interest, rather than a compelling interest, to restrict or regulate the right.²

The right to use the public highways for travel by motor vehicles is one which properly can be regulated by the legislature in the valid exercise of the police power of the state.³

Owners and operators of motor vehicles have the right to use the public highways on an equal footing with the owners and operators of other vehicles.⁴

A farm tractor may be used on a highway if it is used solely for agricultural, farming, or manufacturing purposes.⁵

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Footnotes

1 Satterlee v. State, 289 Ark. 450, 711 S.W.2d 827 (1986); People v. Peterson, 734 P.2d 118 (Colo. 1987); State v. Folda, 267 Mont. 523, 885 P.2d 426 (1994); City of Spokane v. Port, 43 Wash. App. 273, 716 P.2d 945 (Div. 3 1986); Brandmiller v. Arreola, 189 Wis. 2d 215, 525 N.W.2d 353 (Ct. App. 1994), decision aff'd, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).

Driving a motor vehicle is not a fundamental right; however, a driver may still bring a claim of lack of due process for the temporary taking of her driving privileges. Indiana Bureau of Motor Vehicles v. Gurtner, 27 N.E.3d 306 (Ind. Ct. App. 2015).

2 People v. Peterson, 734 P.2d 118 (Colo. 1987); Heying v. State, 515 N.E.2d 1125 (Ind. Ct. App. 1987).

3 State v. Garvin, 945 A.2d 821 (R.I. 2008).

4 Slusher v. Safety Coach Transit Co., 229 Ky. 731, 17 S.W.2d 1012, 66 A.L.R. 1378 (1929); City of St. Paul v. Twin City Motor Bus Co., 187 Minn. 212, 245 N.W. 33 (1932).

5 Ryan v. Pennsylvania Life Ins. Co., 123 S.W.3d 142 (Ky. 2003), as modified, (Jan. 28, 2004).

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I. In General

B. Rights to Use Highways

§ 12. Motorcycles and bicycles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 4

Motorcycles are lawful vehicles, and their rights on the highway are the same as those of automobiles.¹ So too, in the absence of any specific regulation to the contrary, a bicycle is a vehicle of such a nature that it may be properly used upon the highways and streets.²

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Footnotes

- 1 [Van Cise v. Lencioni](#), 106 Cal. App. 2d 341, 235 P.2d 236 (1st Dist. 1951); [Curtis v. Perry](#), 171 Wash. 542, 18 P.2d 840 (1933).
- 2 [Lee v. City of Port Huron](#), 128 Mich. 533, 87 N.W. 637 (1901).

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I. In General

B. Rights to Use Highways

§ 13. Vehicles engaged in transportation for hire

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 4

The use of highways for the purpose of transporting persons or property for hire, by the ordinary means, is incidental to and consistent with the primary purpose of their establishment, and is therefore a proper use, in the absence of any restrictive regulation.¹ Such use is not, however, one which may be exercised as of right, but is a special or permissive use.²

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Footnotes

- 1 [Ex parte Dickey](#), 76 W. Va. 576, 85 S.E. 781 (1915); [Park Hotel Co. v. Ketchum](#), 184 Wis. 182, 199 N.W. 219, 33 A.L.R. 351 (1924) (taxicab).
- 2 [Stephenson v. Binford](#), 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

B. Rights to Use Highways

§ 14. Pedestrians

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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In the absence of a statute or ordinance to the contrary, a pedestrian has the right to use and travel upon any portion of a public highway or street at any time of the day or night.¹ A pedestrian's rights and the rights of one operating a vehicle thereon are mutual, reciprocal, and equal.² Neither may use the public way in disregard of the right of the other to use it, and each must accommodate his or her movements to the other's lawful use of it; each must anticipate the other's possible presence, and each must recognize the dangers inherent in the manner in which it may lawfully be used by the other.³

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Footnotes

- 1 Burk v. Extrafine Bread Bakery, 208 Cal. 105, 280 P. 522 (1929); Igo v. Smith, 282 Ky. 336, 138 S.W.2d 497 (1940) (disapproved of on other grounds by, Bettis v. Rickett, 310 S.W.2d 775 (Ky. 1958)).
- 2 Williamson v. Garrigus, 228 Ark. 705, 310 S.W.2d 8 (1958); Layton v. Cook, 248 Miss. 690, 160 So. 2d 685 (1964); Deputy v. Kimmell, 73 W. Va. 595, 80 S.E. 919 (1914).
- 3 Mahan v. State, to Use of Carr, 172 Md. 373, 191 A. 575 (1937).

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I. In General

C. Regulation, in General

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I. In General

C. Regulation, in General

1. General Considerations

§ 15. Regulation of motor vehicles, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(1), 5(5)

The regulation of motor vehicles on the highway is a legitimate exercise of the police powers of the government.¹ In general, the goal of traffic regulations is to promote highway safety.² Use of public highways and streets is subject to such reasonable and impartial regulations adopted pursuant to the police power as are calculated to secure to the general public the largest practical benefit from the enjoyment of the right of use,³ and to provide for their safety while they are upon such public ways in the enjoyment of such right.⁴ A person's right and liberty to use a highway is not absolute; it may be regulated in the public interest through reasonable and reasonably executed regulations.⁵ It would produce an intolerable situation on the public highways if state law subscribed to a theory that they could not be summarily regulated in the interest of the public.⁶

However, the power to regulate vehicles and their use of the public ways may not be used indirectly to control and regulate the business of the user.⁷ Governmental regulations with respect to the operation of motor vehicles ordinarily are applicable only to operation on public streets and highways, and do not apply to operation on private premises.⁸ The regulation and control of the use of highways and streets by vehicular or pedestrian traffic will not be assumed by the courts, since such matters involve the exercise of legislative and administrative functions.⁹

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Footnotes

- 1 State v. Sullivan, 201 N.C. App. 540, 687 S.E.2d 504 (2009); Tapp v. Perciful, 2005 OK 49, 120 P.3d 480
2 (Okla. 2005).
- 3 Johnson v. State, 879 N.E.2d 649 (Ind. Ct. App. 2008); Lyndhurst v. McGinness, 138 Ohio App. 3d 617,
4 741 N.E.2d 976 (8th Dist. Cuyahoga County 2000).
- 5 State v. Aldrich, 70 N.H. 391, 47 A. 602 (1900); Boone v. Clark, 214 S.W. 607 (Tex. Civ. App. Fort Worth
6 1919), writ refused, (Oct. 20, 1920); Park Hotel Co. v. Ketchum, 184 Wis. 182, 199 N.W. 219, 33 A.L.R.
7 351 (1924).
- 8 State v. Skurdal, 235 Mont. 291, 767 P.2d 304 (1988); Shaffer v. Acme Limestone Co., Inc., 206 W. Va.
9 333, 524 S.E.2d 688 (1999).
- Chandler v. Secretary of Florida Dept. of Transp., 695 F.3d 1194 (11th Cir. 2012) (applying Florida law).
- Chandler v. Secretary of Florida Dept. of Transp., 695 F.3d 1194 (11th Cir. 2012) (applying Florida law).
- Levine v. Police Com'n of Town of Fairfield, 28 Conn. App. 344, 612 A.2d 787 (1992); Hertz Drivurself
Stations v. Siggins, 359 Pa. 25, 58 A.2d 464, 7 A.L.R.2d 438 (1948).
- Eberth v. County of Prince William, 49 Va. App. 105, 637 S.E.2d 338 (2006).
- Perlmutter v. Greene, 259 N.Y. 327, 182 N.E. 5, 81 A.L.R. 1543 (1932).

7A Am. Jur. 2d Automobiles § 16

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

1. General Considerations

§ 16. Construction of laws regulating vehicles and use of highways

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1), 5(5)

The general rules governing the interpretation and construction of statutes and ordinances generally are applicable to regulations governing vehicles and their use upon the public ways.¹ Every provision of a motor vehicle code should be interpreted in light of its intent to promote public safety.² It has been held that traffic regulations affecting safety should be liberally construed to effect their purpose.³ However, it has also been held that statutory authority to prescribe traffic rules is strictly construed,⁴ and that an ambiguity in a motor vehicle act should be read in favor of the motor vehicle operator because personal interests are at stake.⁵ Where the statute is clear on its face, no construction is warranted.⁶

The central principle which runs through the cases dealing with statutes regulatory of highway traffic is that such statutes must have a practical or workable interpretation, not an arbitrary or unreasonable construction, and never one that would require an impossibility.⁷ Where a court is confronted with a statute, the literal construction of which would render it unconstitutional, the court must adopt such a construction, when reasonably possible, as will save the statute, and at the same time save every savable provision or term in it.⁸

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Footnotes

¹ [State v. Riley](#), 638 So. 2d 507 (Fla. 1994); [Delzer v. Penn](#), 534 N.W.2d 58 (S.D. 1995); [Ludwick v. Doe](#), 914 S.W.2d 522 (Tenn. Ct. App. 1995).

- 2 Com. v. DeFusco, 378 Pa. Super. 442, 549 A.2d 140 (1988).
3 State v. Bissonette, 445 N.W.2d 843 (Minn. Ct. App. 1989).
4 Save the Sunset Strip Coalition v. City of West Hollywood, 87 Cal. App. 4th 1172, 105 Cal. Rptr. 2d 172
(2d Dist. 2001); City of Hollywood v. Arem, 154 So. 3d 359 (Fla. 4th DCA 2014), review denied, 168 So.
3d 224 (Fla. 2015) and all writ jurisdiction dismissed, 171 So. 3d 114 (Fla. 2015).
5 State v. Jersey Carting, Inc., 259 N.J. Super. 130, 611 A.2d 677 (Law Div. 1992).
6 Missouri Highway and Transp. Com'n v. Mauer, 728 S.W.2d 722 (Mo. Ct. App. E.D. 1987).
7 Teche Lines, Inc., v. Danforth, 195 Miss. 226, 12 So. 2d 784 (1943).
8 Teche Lines, Inc., v. Danforth, 195 Miss. 226, 12 So. 2d 784 (1943).

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7A Am. Jur. 2d Automobiles § 17

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 17. Federal regulation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(1)

A.L.R. Library

Judicial review of orders under National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C.A. secs. 1381 et seq.),
18 A.L.R. Fed. 610

Validity and construction of safety standards issued under National Traffic and Motor Vehicle Safety Act of 1966, as amended
(15 USC secs. 1381 et seq.), 6 A.L.R. Fed. 988

The power of the federal government to regulate interstate commerce¹ gives it control over motor vehicles engaged in business between one state and another in the same degree as such control exists as to any other class of vehicles engaged in the same occupation.² Examples of such federal regulation include the Motor Vehicle Safety Act³ whose purpose is to reduce traffic accidents and deaths and injuries from traffic accidents.⁴ The Act states that it is necessary to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce,⁵ and to carry out needed safety research and development.⁶ The Highway Safety Act establishes various programs and improvements,⁷ including in-vehicle alcohol detection device research.⁸ The National Driver Registry Act establishes a central national clearinghouse for information on drivers,⁹ and the National Motor Vehicle Title Information System establishes a national clearinghouse of information on motor

vehicle titles.¹⁰ There are also statutes requiring state participation in an international registration plan and an international fuel tax agreement.¹¹ Congress has also enacted legislation dealing with theft prevention of motor vehicles.¹² In addition, under federal law the Secretary of Transportation must maintain a program for developing consumer information on passenger motor vehicles.¹³ In this connection, it should also be remembered that the purpose of the Consumer Product Safety Act is to protect the public against unreasonable risks of injury associated with consumer products, to assist consumers in evaluating the comparative safety of consumer products, to develop uniform safety standards for consumer products and to minimize conflicting state and local regulations, and to promote research and investigation into the cause and prevention of product-related deaths, illnesses, and injuries.¹⁴

There is also a statute providing for the withholding of apportionments to states that do not meet specified requirements regarding the operation of motor vehicles by intoxicated minors.¹⁵

Congress, in the exercise of its power to regulate interstate commerce, can require a municipality to permit interstate commerce by motor vehicles to pass over its streets.¹⁶ However, Congress has no general power to enact police regulations operative within the territorial limits of a state, and it generally cannot take the power to enact such regulations from the states or attempt any supervision over regulations of the states established under the police power.¹⁷ Nonetheless, once it is assumed that the general subject of a controversy is properly within the scope of the enumerated powers granted to the federal government, that government has broad powers to prescribe police regulations concerning such subjects just as a state government would have concerning a subject within its reserved powers.¹⁸

The federal government, through Acts of Congress, may regulate and control the operation of motor vehicles insofar as they are acting as governmental agencies in performing governmental functions or duties.¹⁹ In this regard, there are statutes authorizing the establishment of pools and transportation systems for government motor vehicles,²⁰ and statutes providing safety standards for motor vehicles acquired by the federal government.²¹

Congress has properly delegated to the commissioners of the District of Columbia the power to regulate the movement of vehicles on the public streets thereof.²²

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Footnotes

1 U.S. Const. Art. I, § 8.

2 *Adair v. U.S.*, 208 U.S. 161, 28 S. Ct. 277, 52 L. Ed. 436 (1908) (overruled in part on other grounds by, *Phelps Dodge Corp. v. N.L.R.B.*, 313 U.S. 177, 61 S. Ct. 845, 85 L. Ed. 1271, 133 A.L.R. 1217 (1941)).

3 49 U.S.C.A. §§ 30101 et seq.

4 49 U.S.C.A. § 30101.

5 49 U.S.C.A. § 30101(1).

6 49 U.S.C.A. § 30101(2).

7 23 U.S.C.A. §§ 401 et seq.

8 23 U.S.C.A. § 403.

9 49 U.S.C.A. §§ 30301 et seq.

10 49 U.S.C.A. §§ 30501 et seq.

11 49 U.S.C.A. §§ 31701 et seq.

12 49 U.S.C.A. §§ 33101 et seq.

13 49 U.S.C.A. § 32302.

14 Am. Jur. 2d, Products Liability § 1889.

15 23 U.S.C.A. § 161.
16 City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 78 S. Ct. 1063, 2 L. Ed. 2d 1174 (1958).
17 U.S. v. Dewitt, 76 U.S. 41, 19 L. Ed. 593, 1869 WL 11569 (1869).
18 Am. Jur. 2d, Constitutional Law § 343.
19 Johnson v. State of Maryland, 254 U.S. 51, 41 S. Ct. 16, 65 L. Ed. 126 (1920).
20 40 U.S.C.A. §§ 601 et seq.
21 40 U.S.C.A. §§ 17101 et seq.
22 White v. District of Columbia, 4 F.2d 163 (App. D.C. 1925).

7A Am. Jur. 2d Automobiles § 18

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 18. Federal regulation—Preemption of state and local regulation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1), 9

A.L.R. Library

[Validity of traffic regulations requiring motorcyclists to wear helmets or other protective headgear, 72 A.L.R.5th 607](#)

[Validity and construction of safety standards issued under National Traffic and Motor Vehicle Safety Act of 1966, as amended \(15 USC secs. 1381 et seq.\), 6 A.L.R. Fed. 988](#)

The Motor Vehicle Safety Act¹ does not generally preempt the field of regulation of motor vehicle safety,² but it does preempt state standards relating to the same subject that are either more or less stringent than the federal standards.³ Only state statutes that conflict with federal safety standards are preempted.⁴ Thus, preemption should only occur where compliance with both the federal and local regulations is impossible.⁵ Moreover, while a state may be preempted from establishing its own standards, it is not preempted from enforcing the federal standards.⁶ Thus, federal safety standards on motorcycle helmets do not preempt state laws requiring motorcycle riders to wear helmets,⁷ but the state cannot prescribe helmets that differ from those in the federal regulations.⁸ State laws requiring proof of compliance with federal standards before automobiles not originally designed for the United States market may be licensed and registered are also not preempted by the federal regulations.⁹

Observation:

The United States has signed the United Nations Convention on Road Traffic. The Convention is part of federal law, and the provisions of the Convention supersede any contrary state law.¹⁰

A township's 14-ton weight restriction on a particular road for the protection of the road was expressly preempted under the Supremacy Clause by a provision of the Surface Transportation Assistance Act (STAA) that cabined the degree and manner in which state and local governments could restrict access of commercial vehicles to and from the federal interstate highway system, since the very language of the Act provided that "[a] State may not enact or enforce a law denying to a commercial motor vehicle reasonable access between" Interstate and certain specified destinations.¹¹ On the other hand, a city ordinance which limited commercial truck routes and parking did not deny trucks "reasonable access" to food, fuel, rest and repairs, within the meaning of the STAA, and therefore the ordinance was not preempted by that statute; permissible restrictions to access were not limited to safety matters, the STAA did not require the city to grant unfettered access to commercial motor vehicles to any restaurant, gas station, or hotel within the city, commercial motor vehicles were permitted to leave designated truck routes to load or unload cargo, provide services, or seek repairs, and there were multiple facilities for food, fuel, rest, and repair that commercial vehicles could safely access while not traveling on residential streets.¹² Likewise, a city's freeway towing ordinance was exempt from federal preemption under the Federal Aviation Administration Authorization Act to the extent that the program regulated tows without the owner's consent.¹³

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Footnotes

1 49 U.S.C.A. §§ 30101 et seq.

2 *Chrysler Corp. v. Rhodes*, 416 F.2d 319 (1st Cir. 1969); *People v. Giese*, 95 Misc. 2d 792, 408 N.Y.S.2d 693 (Sup 1978), order aff'd, 68 A.D.2d 1019, 414 N.Y.S.2d 947 (2d Dep't 1979).

The Federal Motor Vehicle Safety Standard giving auto manufacturers a choice of installing either simple lap belts or lap-and-shoulder belts on rear inner seats did not preempt California tort claims seeking to impose liability on a manufacturer for installing a simple lap belt on the rear inner seat of a minivan; the regulation's history, the Department of Transportation's (DOT) contemporaneous explanation, and its consistently held interpretive views indicated that providing manufacturers with this seatbelt choice was not a significant objective of the federal regulation. *Williamson v. Mazda Motor of America, Inc.*, 562 U.S. 323, 131 S. Ct. 1131, 179 L. Ed. 2d 75 (2011).

3 *Sims v. State of Fla., Dept. of Highway Safety and Motor Vehicles*, 862 F.2d 1449 (11th Cir. 1989); *Great Dane Trailers, Inc. v. Estate of Wells*, 52 S.W.3d 737 (Tex. 2001).

4 *Buzzard v. Roadrunner Trucking, Inc.*, 966 F.2d 777 (3d Cir. 1992); *State v. Oberlton*, 262 N.J. Super. 204, 620 A.2d 468 (Law Div. 1992).

5 *Interstate Towing Ass'n, Inc. v. City of Cincinnati, Ohio*, 6 F.3d 1154 (6th Cir. 1993); *National Tank Truck Carriers, Inc. v. Burke*, 535 F. Supp. 509 (D.R.I. 1982), judgment aff'd, 698 F.2d 559 (1st Cir. 1983).

A vehicle buyer's state law negligence claim against an automobile manufacturer, stemming from alleged delays in repairing a known defect in the ignition switch pursuant to a recall, was not conflict-preempted under the Motor Vehicle Safety Act; the Act specifically contemplated operating in conjunction with

common law tort remedies, contemplated diversity in recall mechanisms, and application of traditional common law negligence duty would not put manufacturer in a position where it could not comply with both state and federal duties. *In re General Motors LLC Ignition Switch Litigation*, 154 F. Supp. 3d 30 (S.D. N.Y. 2015) (applying Oklahoma law).

6 Sims v. State of Fla., Dept. of Highway Safety and Motor Vehicles, 862 F.2d 1449 (11th Cir. 1989); Juvenile Products Mfrs. Ass'n, Inc. v. Edmisten, 568 F. Supp. 714 (E.D. N.C. 1983); Bianco v. California Highway Patrol, 24 Cal. App. 4th 1113, 29 Cal. Rptr. 2d 711 (4th Dist. 1994), as modified on denial of reh'g, (May 24, 1994).

7 Com. v. Guest, 12 Mass. App. Ct. 941, 425 N.E.2d 779 (1981); Robotham v. State, 241 Neb. 379, 488 N.W.2d 533 (1992).

8 Robotham v. State, 241 Neb. 379, 488 N.W.2d 533 (1992).

9 Sims v. State of Fla., Dept. of Highway Safety and Motor Vehicles, 862 F.2d 1449 (11th Cir. 1989).

10 Busby v. State, 40 P.3d 807 (Alaska Ct. App. 2002).

11 Aux Sable Liquid Products v. Murphy, 526 F.3d 1028 (7th Cir. 2008), referring to 49 U.S.C.A. § 31114.

12 Garza v. City of La Porte, 160 F. Supp. 3d 986 (S.D. Tex. 2016) (applying Texas law), and referring to 49 U.S.C.A. § 31114.

13 Houston Professional Towing Ass'n v. City of Houston, 812 F.3d 443 (5th Cir. 2016) (applying Texas law), and referring to 49 U.S.C.A. § 14501(c)(2)(C).

7A Am. Jur. 2d Automobiles § 19

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 19. State regulation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1)

The operation of a motor vehicle upon the public highways is not a fundamental right, but only a privilege.¹ Under its police power, the state may control generally the operation of motor vehicles upon a public highway.² State legislatures, by virtue of their inherent police powers and plenary jurisdiction over public ways, may enact reasonable regulations governing the conduct of the owners and drivers of vehicles operated thereon,³ and calculated to promote care on the part of highway users,⁴ which regulations may extend to nonresidents as well as residents.⁵ In regulating the use of public highways, the state has traditionally been afforded exceptionally broad discretion.⁶

In the exercise of its power to regulate and control the public highways, a state legislature may prohibit the use on the highways of such vehicles as are dangerous to the general traveling public.⁷ The legislature cannot, however, prevent citizens from using the public highways in the ordinary manner, and the fact that the vehicle used for the movement of persons or things along the highways is novel will not justify its exclusion.⁸

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Footnotes

¹ § 11.

- 2 Zack's, Inc. v. City of Sausalito, 165 Cal. App. 4th 1163, 81 Cal. Rptr. 3d 797 (1st Dist. 2008); Cohen v.
3 City of Hartford, 244 Conn. 206, 710 A.2d 746 (1998); D'Ambrosio v. State, 245 Ga. App. 12, 536 S.E.2d
218 (2000).
As to the source of police power, generally, see [Am. Jur. 2d, Constitutional Law § 332](#).
4 Snavely v. City of Huntsville, 785 So. 2d 1162 (Ala. Crim. App. 2000); Agomo v. Fenty, 916 A.2d 181, 26
A.L.R.6th 767 (D.C. 2007); People v. Blackorby, 146 Ill. 2d 307, 166 Ill. Dec. 902, 586 N.E.2d 1231 (1992);
Tapp v. Perciful, 2005 OK 49, 120 P.3d 480 (Okla. 2005); Shumpert v. South Carolina Dept. of Highways
and Public Transp., 306 S.C. 64, 409 S.E.2d 771 (1991).
5 Hadden v. Aitken, 156 Neb. 215, 55 N.W.2d 620, 35 A.L.R.2d 1003 (1952) (overruled in part on other
grounds by, Stauffer v. Weedlun, 188 Neb. 105, 195 N.W.2d 218 (1972)); Matter of Hansen, 298 N.W.2d
816 (S.D. 1980).
6 Wuchter v. Pizzutti, 276 U.S. 13, 48 S. Ct. 259, 72 L. Ed. 446, 57 A.L.R. 1230 (1928); State v. Justesen,
63 Or. App. 544, 665 P.2d 380 (1983).
7 As to application of regulations to vehicles in interstate traffic, see [§ 28](#).
State v. French, 77 Haw. 222, 883 P.2d 644 (Ct. App. 1994); People v. Blackorby, 146 Ill. 2d 307, 166 Ill.
Dec. 902, 586 N.E.2d 1231 (1992).
Commonwealth v. Kingsbury, 199 Mass. 542, 85 N.E. 848 (1908).
8 People v. Rosenheimer, 209 N.Y. 115, 102 N.E. 530 (1913).

7A Am. Jur. 2d Automobiles § 20

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 20. Municipal or local regulation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1), 9

Although a city's authority to regulate traffic in some jurisdictions comes from the state constitution,¹ unless expressly provided by the legislature, a city has no authority over vehicular traffic control.² However, the police power of the state to regulate and control the use of its highways may be delegated to municipalities for exercise by them in the interest of public safety and the promotion of the general welfare.³ In this connection, a municipality's power to regulate traffic on a public street is an exercise of police power delegated from the state.⁴ For example, local authorities are permitted to place and maintain traffic control devices upon highways under their jurisdictions.⁵ A city may not attempt to regulate beyond its jurisdiction.⁶ State statutes may place the responsibility of regulating traffic traveling on state highways squarely on state and local government actors.⁷

A county or municipality may regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state.⁸ The grant of authority to a local government to regulate traffic is not exclusive and will not preclude state law.⁹ Moreover, a state may withdraw its delegation of authority to a city to regulate traffic.¹⁰

Observation:

Pursuant to its authority to limit traffic, a city may close a road to vehicular traffic.¹¹

By the enactment of a general law covering a specific phase of motor vehicle regulation, the state may impliedly deprive local authorities of the power to pass ordinances which would be inconsistent with such law.¹² However, simply because a state undertakes to impose certain regulations applicable to the entire state, a municipality is not necessarily deprived of the power of imposing other regulations adapted to its own peculiar conditions, if these are not inconsistent with those of a general character prescribed for the entire state.¹³ Moreover, a state statute may expressly give a city authority to regulate in a certain area and indicate that the city's regulatory authority supersedes any inconsistent state law provisions.¹⁴

While the regulation of traffic upon a public street is of special interest to the people of a municipality, it does not follow that such regulation is a municipal affair, and if there is a doubt as to whether or not such regulation is a municipal affair, that doubt must be resolved in favor of the legislative authority of the state.¹⁵

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Footnotes

- 1 Cleveland v. Martinez, 126 Ohio Misc. 2d 36, 2003-Ohio-7046, 801 N.E.2d 938 (Mun. Ct. 2003).
- 2 Homes on Wheels v. City of Santa Barbara, 119 Cal. App. 4th 1173, 15 Cal. Rptr. 3d 132 (2d Dist. 2004); Hall v. State, 2009 OK CR 28, 221 P.3d 130 (Okla. Crim. App. 2009).
- 3 Transus, Inc. v. City of Dothan, 497 So. 2d 179 (Ala. Civ. App. 1986); City of Cedar Rapids v. State, 478 N.W.2d 602 (Iowa 1991); Damon v. City of Kansas City, 419 S.W.3d 162 (Mo. Ct. App. W.D. 2013); State v. Parker, 68 Ohio St. 3d 283, 1994-Ohio-93, 626 N.E.2d 106 (1994); Town of East Troy v. A-1 Service Co., Inc., 196 Wis. 2d 120, 537 N.W.2d 126 (Ct. App. 1995).
- 4 Teeter v. City of Edmond, 2004 OK 5, 85 P.3d 817 (Okla. 2004).
- 5 State v. Lee, 265 Neb. 663, 658 N.W.2d 669 (2003).
- 6 City of East Lansing v. Yocca, 142 Mich. App. 491, 369 N.W.2d 918 (1985).
- 7 Packard v. Darveau, 759 F.3d 897 (8th Cir. 2014) (applying Nebraska law).
- 8 People ex rel. Ryan v. Village of Hanover Park, 311 Ill. App. 3d 515, 243 Ill. Dec. 823, 724 N.E.2d 132 (1st Dist. 1999); Edwards v. City of Ellisville, 426 S.W.3d 644 (Mo. Ct. App. E.D. 2013); Ballard v. City of Creve Coeur, 419 S.W.3d 109 (Mo. Ct. App. E.D. 2013); State ex rel. Scott v. Cleveland, 166 Ohio App. 3d 293, 2006-Ohio-2062, 850 N.E.2d 747 (8th Dist. Cuyahoga County 2006), judgment aff'd, 112 Ohio St. 3d 324, 2006-Ohio-6573, 859 N.E.2d 923 (2006); State v. Greene, 97 Wash. App. 473, 983 P.2d 1190 (Div. 1 1999).
- 9 People v. Murphy, 169 Misc. 2d 357, 649 N.Y.S.2d 962 (App. Term 1996).
- 10 Trailways, Inc. v. City of Atlantic City, 179 N.J. Super. 258, 431 A.2d 191 (Law Div. 1980).
- 11 Christensen v. City of Pocatello, 142 Idaho 132, 124 P.3d 1008 (2005) (authority to open road for use by only pedestrians and bicyclists).
- 12 Brazier v. City of Philadelphia, 215 Pa. 297, 64 A. 508 (1906).
- 13 City of Tell City v. Noble, 489 N.E.2d 958 (Ind. Ct. App. 1986); Mahoney v. Maxfield, 102 Minn. 377, 113 N.W. 904 (1907); Brazier v. City of Philadelphia, 215 Pa. 297, 64 A. 508 (1906).
- 14 Corona Ready Mix, Inc. v. State Dept. of Motor Vehicles Traffic Violations Bureau Appeals Bd., 226 A.D.2d 630, 641 N.Y.S.2d 128 (2d Dep't 1996) (weight restrictions); Burke v. Santoro, 172 A.D.2d 579, 568 N.Y.S.2d 144 (2d Dep't 1991) (pedestrian traffic).
- 15 Zack's, Inc. v. City of Sausalito, 165 Cal. App. 4th 1163, 81 Cal. Rptr. 3d 797 (1st Dist. 2008).

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7A Am. Jur. 2d Automobiles § 21

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 21. Municipal or local regulation—Bicycles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1), 5(5)

Under properly delegated legislative authority, a municipality may enact such ordinances governing the use of its streets by bicycles and tricycles as are necessary, in its judgment, to protect the public.¹ Thus, a municipal ordinance may prohibit riding bicycles on the sidewalks.² The public safety and convenience may require regulations of this character, but they must not, unless made by virtue of specific authority, be unreasonable, or improperly in restraint of the exercise of personal rights or of the lawful use of private property.³

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Footnotes

- 1 City of Des Moines v. Keller, 116 Iowa 648, 88 N.W. 827 (1902); Gagnier v. City of Fargo, 11 N.D. 73, 88 N.W. 1030 (1902).
- 2 McCrimmon v. State, 505 So. 2d 13 (Fla. 5th DCA 1987); Schallenberger v. Rudd, 244 Kan. 230, 767 P.2d 841 (1989).
- 3 Moore v. District of Columbia, 12 App. D.C. 537, 41 L.R.A. 208, 1898 WL 15579 (App. D.C. 1898).

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7A Am. Jur. 2d Automobiles § 22

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 22. Municipal or local regulation—Conflict with state statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1), 9

A county or municipality may regulate in an area such as traffic whenever its regulation is not in conflict with the general laws of the state.¹ However, such regulations are invalid if they are in conflict with statutes relating to the subject.²

Where the state has retained the power to provide general laws regulating traffic on the highways of the state, legislation enacted pursuant to such right cannot be curtailed, infringed upon, or annulled by local authorities,³ and where there is conflict between such a state statute and a municipal ordinance, the statute prevails.⁴ This rule applies even in a jurisdiction where the municipality is granted the authority under the constitution to make and enforce laws respecting municipal affairs, subject only to the provisions of its charter, the regulation of traffic not being deemed a “municipal affair” within the meaning of the constitutional grant of authority.⁵ On the other hand, if the state statute, fairly construed, does not purport to be exclusive of the power of a municipality to make and enforce traffic regulations for the municipality, the fact that the municipal regulations are more stringent than the traffic regulations provided by statute does not invalidate them.⁶

Whether or not a local government may enact an ordinance at variance with a state statute depends on whether the state intended to preempt the field.⁷ Generally, an ordinance should stand unless there is an actual conflict between the ordinance and the statute or unless the legislature has clearly preempted the field so as to preclude any municipal actions.⁸ A conflict exists when the local regulation is facially inconsistent with the state law,⁹ such as when the ordinance prohibits an act permitted by statute or permits an act prohibited by statute.¹⁰

A state statute takes precedence over a local ordinance, such that the ordinance will be determined to exceed the municipality's powers under the Home Rule Amendment to a state constitution, when: (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.¹¹ For example, a city ordinance that created an automated speed-limit enforcement system imposing civil liability on violators did not conflict with a state general law speed-limit statute but merely supplemented it, and thus did not exceed the city's home rule powers under the state constitution; the ordinance did not change speed limits established by state law or change the ability of police officers to cite offenders for traffic violations.¹²

A state statutory scheme regulating parking does not hinder municipalities' rights to simultaneously regulate parking.¹³ However, because traffic ordinances are an exercise of the police power, they may be invalidated if they conflict with the general laws of the state.¹⁴

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Footnotes

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7A Am. Jur. 2d Automobiles § 23

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 23. Regulation by public officers and boards

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West's Key Number Digest, [Automobiles](#)  5(1)

A statute or ordinance placing discretionary power in an administrative agency must furnish standards for those who administer such power.¹ Accordingly, legislative power to promulgate regulations governing motor vehicles and traffic upon public ways cannot be delegated to administrative officers or boards, to be exercised in their uncontrolled discretion.² However, no unconstitutional delegation of legislative power to regulate motor vehicles and traffic upon public ways is involved in leaving it to the discretion of administrative officers or boards to accomplish in detail what is authorized or required by the law in general terms, so long as such discretion is limited with clearly defined standards and policies to be implemented.³ There are many regulations respecting motor vehicles and traffic upon public ways which may be prescribed or promulgated by a public officer or board acting under powers granted by the legislature.⁴ Courts will generally uphold provisions permitting public officers or boards to determine conditions under which a law respecting motor vehicles or traffic upon public ways may or may not apply or to alter such regulations to meet peculiar local conditions.⁵

The exercise of functions of a ministerial character in connection with motor vehicle and traffic regulation may be delegated by the legislature to—

— the highway department.⁶

— a state department of transportation.⁷

— the motor vehicle commissioner or administration.⁸

— park commissioners.⁹

— police boards.¹⁰

— or to the such other public officers or boards as it deems fit.¹¹

To the extent that the legislature has the power to delegate the power to perform an administrative function to a board or commission, it has also the power to revoke or change such delegation.¹² However, local power to regulate cannot be taken away and conferred on another authority without clear statutory expression.¹³

The fact that there is no provision for an appeal from the action of public authorities in promulgating regulations respecting motor vehicles or traffic upon public ways does not necessarily render them invalid.¹⁴

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Footnotes

1 Am. Jur. 2d, Administrative Law § 48.

2 Cicero Lumber Co. v. Town of Cicero, 176 Ill. 9, 51 N.E. 758 (1898); Thompson v. Smith, 155 Va. 367, 154 S.E. 579, 71 A.L.R. 604 (1930).

3 People v. Peterson, 734 P.2d 118 (Colo. 1987); Springfield Park Dist. v. Buckley, 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986).

4 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); Interstate Trucking Co. v. Dammann, 208 Wis. 116, 241 N.W. 625, 82 A.L.R. 1080 (1932).

5 Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932); Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).

6 People v. Peterson, 734 P.2d 118 (Colo. 1987).

7 American Bus Lines, Inc. v. Arizona Corp. Commission, 129 Ariz. 595, 633 P.2d 404 (1981); State v. Moore, 259 Ga. 139, 376 S.E.2d 877 (1989); Dartez v. Powell Oil Co., 499 So. 2d 1046 (La. Ct. App. 3d Cir. 1986).

8 State v. Anonymous, 36 Conn. Supp. 551, 421 A.2d 867 (Super. Ct. Appellate Sess. 1980); Department of Transp., Motor Vehicle Admin. v. Armacost, 299 Md. 392, 474 A.2d 191 (1984).

9 Shanks v. Forsyth County Park Authority, Inc., 869 F. Supp. 1231 (M.D. N.C. 1994); American Motorcyclist Ass'n v. Park Com'n of City of Brockton, 412 Mass. 753, 592 N.E.2d 1314 (1992).

10 Commonwealth v. Plaisted, 148 Mass. 375, 19 N.E. 224 (1889).

As to police officers, see § 24.

11 People ex rel. Curren v. Schommer, 392 Ill. 17, 63 N.E.2d 744, 167 A.L.R. 1347 (1945); Molony-Vierstra v. Michigan State University, 417 Mich. 224, 331 N.W.2d 473, 10 Ed. Law Rep. 359 (1983).

12 Illinois Malleable Iron Co. v. Commissioners of Lincoln Park, 263 Ill. 446, 105 N.E. 336 (1914).

13 Robinson v. Indianola Mun. Separate School Dist., 467 So. 2d 911, 24 Ed. Law Rep. 1077 (Miss. 1985).

14 Ashland Transfer Co. v. State Tax Commission, 247 Ky. 144, 56 S.W.2d 691, 87 A.L.R. 534 (1932).

7A Am. Jur. 2d Automobiles § 24

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

2. Who May Regulate Motor Vehicles

§ 24. Regulation by public officers and boards—Police officers

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There is some question as to the extent to which the power to direct traffic upon the public ways may be delegated to police officers.¹ In any event, an ordinance which imposes upon police officers the duty of enforcing the provisions of a traffic ordinance, but gives them the discretion to direct traffic as public safety or convenience may demand in times of an emergency,² or to expedite traffic or safeguard pedestrians,³ is valid and constitutional, and is not open to the objection that it is an unconstitutional delegation of legislative power to police officers, or that it deprives motorists of their liberty without due process of law. Such an ordinance is upheld on the theory that the subject is one which does not admit of rigid or fixed regulations which will operate automatically and with entire impartiality without the intervention of a directing intelligence.⁴ In some instances, however, provisions conferring such power of direction have been declared invalid upon the ground that they vested in the officer an unnecessary discretion and power of discrimination.⁵

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Footnotes

- ¹ [City of Cleveland v. Gustafson](#), 124 Ohio St. 607, 11 Ohio L. Abs. 416, 180 N.E. 59, 79 A.L.R. 1325 (1932).
- ² [City of Chicago v. Marriotto](#), 332 Ill. 44, 163 N.E. 369, 60 A.L.R. 501 (1928); [Com. v. Harrison](#), 183 Pa. Super. 133, 130 A.2d 198 (1957).
- ³ [Com. v. Harrison](#), 183 Pa. Super. 133, 130 A.2d 198 (1957).
- ⁴ [City of Chicago v. Marriotto](#), 332 Ill. 44, 163 N.E. 369, 60 A.L.R. 501 (1928).

7A Am. Jur. 2d Automobiles § 25

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

3. Validity of Regulations

§ 25. Validity of regulations, generally

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West's Key Number Digest

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[Validity, construction, and effect of statutes or ordinances forbidding automotive “cruising”—practice of driving repeatedly through loop of public roads through city, 87 A.L.R.4th 1110](#)

[Statute prohibiting reckless driving: Definiteness and certainty, 52 A.L.R.4th 1161](#)

[Indefiniteness of automobile speed regulations as affecting validity, 6 A.L.R.3d 1326](#)

The fixed rule and basic standard by which the validity of all exercises of the police power is tested is that the police power of the state extends only to such measures as are reasonable and that all police regulations must be reasonable under all the circumstances.¹ Statutes and ordinances regulating vehicles and their use on the public highways and streets must be reasonable.² Moreover, the regulation must be reasonably related to a proper legislative goal.³ A red light camera ordinance that reduces the dangerousness of intersections by targeting vehicles that violate traffic regulations is rationally and substantially related to the health, safety, peace, comfort, and general welfare of the public and is a valid exercise of a city's police power.⁴

Whether such a statute or ordinance is reasonable is to be determined in view of the general conditions existing at the time the question arises,⁵ and neither exact precision nor scientific calculation is essential to render regulations of highway traffic

reasonable.⁶ Such regulations may be reasonable notwithstanding that they operate harshly against particular persons,⁷ and, generally speaking, the burden of showing that they are unreasonable is on those who deny their validity.⁸

A town law that prohibited travel of trucks weighing in excess of five tons during nighttime hours on a road to a quarry and asphalt plant, and that specifically prohibited local deliveries from 10:00 p.m. to 6:00 a.m., was a valid exercise of the town's police power pursuant to a statute codifying a municipalities' general power to enact reasonable ordinances to control weight and size of vehicles on streets and to set limits on local deliveries, and thus the town law was constitutional absent a demonstration beyond reasonable doubt that it had no substantial relationship to public health, safety, or general welfare.⁹

Provisions of a state uniform traffic control law limiting the power of a municipality to legislate over traffic matters are to be strictly construed to effectuate their purpose, and any attempt by a local government to circumvent the provisions either by ordinance or contract is invalid unless expressly authorized by the legislature.¹⁰

Observation:

Traffic ordinances are presumed to be valid.¹¹

Statutes and ordinances regulating vehicles and their use on the public highways and streets must also be definite in specifying the conduct which is condemned or prohibited, to the end that the persons concerned may know how to comply with the requirements of the statutes.¹² Thus, a parish's automated traffic signal enforcement (ATSE) ordinance, allowing for citation of owners of vehicles which entered an "intersection" on a red light, is not unconstitutionally vague in violation of due process, where the ordinance prohibited a vehicle from entering an area bounded by the lateral lines of intersecting roads when faced with a steady red light.¹³

In determining the validity of local traffic regulations, it is necessary to balance the effect of the ordinance in promoting health, safety and welfare of the community against the hardships and difficulties it causes to individuals; an evidentiary hearing may be required.¹⁴ In making such determinations, the courts will take judicial notice of matters of common knowledge.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

City ordinance establishing automated traffic enforcement (ATE) system that involved use of mounted cameras and radar equipment designed to detect drivers traveling in excess of speed limits at designated locations within city limits, which authorized private contractor that operated ATE system to access National Law Enforcement Telecommunications System database (Nlets) to identify record owners of vehicles whose license plates images were captured by ATE system as having violated speed limit or having run through red light, for purposes of determining whether traffic citation would, did not involve unlawful delegation of city authority, despite vehicle owners' claim that Nlets was created for benefit of law enforcement, where

contractor's use of Nlets database did not involve exercise of judgment. *Behm v. City of Cedar Rapids*, 922 N.W.2d 524 (Iowa 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 Am. Jur. 2d, Constitutional Law § 370.
- 2 *People v. Blackorby*, 146 Ill. 2d 307, 166 Ill. Dec. 902, 586 N.E.2d 1231 (1992); *State v. Folda*, 267 Mont. 523, 885 P.2d 426 (1994); *Board of Trustees of Inc. Village of Mineola v. Incorporated Village of East Williston*, 232 A.D.2d 443, 648 N.Y.S.2d 170 (2d Dep't 1996).
- 3 *People v. Elkins*, 12 Cal. App. 4th Supp. 1, 16 Cal. Rptr. 2d 504 (App. Dep't Super. Ct. 1992); *Levine v. Police Com'n of Town of Fairfield*, 28 Conn. App. 344, 612 A.2d 787 (1992); *People v. Strawn*, 210 Ill. App. 3d 783, 155 Ill. Dec. 269, 569 N.E.2d 269 (4th Dist. 1991).
- 4 *Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. Ct. App. E.D. 2013); *Krieger v. City of Rochester*, 42 Misc. 3d 753, 978 N.Y.S.2d 588 (Sup 2013).
- 5 *Snyder v. Campbell*, 145 Miss. 287, 110 So. 678, 49 A.L.R. 1402 (1926); *City of Seattle v. Larkin*, 10 Wash. App. 205, 516 P.2d 1083 (Div. 1 1973).
- 6 *South Carolina State Highway Department v. Barnwell Bros.*, 303 U.S. 177, 58 S. Ct. 510, 82 L. Ed. 734 (1938); *State v. Moore*, 259 Ga. 139, 376 S.E.2d 877 (1989).
- 7 *Department of Transp. v. Georgia Min. Ass'n*, 252 Ga. 128, 311 S.E.2d 443 (1984); *Des Moines Metropolitan Area Solid Waste Agency v. City of Grimes*, 495 N.W.2d 746 (Iowa 1993).
- 8 *Department of Transp. v. Georgia Min. Ass'n*, 252 Ga. 128, 311 S.E.2d 443 (1984); *Springfield Park Dist. v. Buckley*, 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986); *Brandmiller v. Arreola*, 199 Wis. 2d 528, 544 N.W.2d 894 (1996).
- 9 *Tilcon New York, Inc. v. Town of Poughkeepsie*, 125 A.D.3d 782, 5 N.Y.S.3d 102 (2d Dep't 2015).
- 10 *City of Hollywood v. Arem*, 154 So. 3d 359 (Fla. 4th DCA 2014), review denied, 168 So. 3d 224 (Fla. 2015) and all writ jurisdiction dismissed, 171 So. 3d 114 (Fla. 2015).
- 11 *Wenco Management Co. v. Town of Carrboro*, 53 N.C. App. 480, 281 S.E.2d 74 (1981); *City of Cincinnati v. Welty*, 64 Ohio St. 2d 28, 18 Ohio Op. 3d 211, 413 N.E.2d 1177 (1980).
- 12 *City of Wichita v. Basgall*, 257 Kan. 631, 894 P.2d 876, 10 A.D.D. 887 (1995); *State v. Dillon*, 670 So. 2d 278 (La. Ct. App. 3d Cir. 1996).
A city ordinance prohibiting the use of a vehicle "as living quarters either overnight, day-by-day, or otherwise" was void for vagueness, in violation of the Due Process Clause, despite the city's contention that its enforcement goals were motivated by legitimate health and safety concerns, where the ordinance did not define "living quarters," or specify how long, or when, was "otherwise," ordinance was broad enough to cover any driver in city who ate food or transported personal belongings in his or her vehicle, and members of city police department interpreted the ordinance in different ways. *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 88 Fed. R. Serv. 3d 1444 (9th Cir. 2014) (applying California law).
- 13 *Morales v. Parish of Jefferson*, 140 So. 3d 375 (La. Ct. App. 5th Cir. 2014), writ denied, 151 So. 3d 582 (La. 2014) and writ denied, 151 So. 3d 582 (La. 2014) and writ denied, 151 So. 3d 583 (La. 2014).
- 14 *White Plains Automotive Supply Co., Inc. v. City of Peekskill*, 98 A.D.2d 776, 469 N.Y.S.2d 487 (2d Dep't 1983).
- 15 *City of Chicago v. Rhine*, 363 Ill. 619, 2 N.E.2d 905, 105 A.L.R. 1045 (1936) (congestion of street traffic in certain districts).

7A Am. Jur. 2d Automobiles § 26

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

3. Validity of Regulations

§ 26. Discrimination; classification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  5(1), 7

Statutes and ordinances regulating vehicles and their operation upon the public ways must not unjustly discriminate between individuals or classes.¹ However, the applicability of such laws may be limited in accordance with a reasonable classification of persons, subjects, or places.² Thus, for safety purposes, users of the highways may constitutionally be classified according to the character and extent of their use, and, if so classified, may be subjected to regulation.³ Also, a classification having a basis in practical convenience is not unconstitutional because it may be lacking in purely theoretical or scientific uniformity.⁴ Because most traffic ordinances do not create a suspect classification,⁵ the classifications will be upheld so long as they bear a rational relationship to a legitimate state purpose.⁶

Motor vehicles have been recognized as properly and reasonably forming a separate class of instrumentalities for legislative purposes.⁷ Accordingly, a statute or ordinance is not unconstitutional as being special legislation merely because it legislates solely upon the question of the operation of automobiles, and does not attempt to regulate the operation of all vehicles using the public highways.⁸ Separate classifications for motorcycles have been upheld in many circumstances,⁹ although prohibitions of motorcycles on park roads have sometimes been struck down as unconstitutional classifications.¹⁰

Separate classification of snowmobiles has also been upheld.¹¹

A city ordinance requiring motor scooter owners to purchase a permit to park in city's traditional permit parking area, and requiring designation of certain parking areas exclusively for scooters with permits, does not violate the equal protection rights

of scooter owners, even though it required them, but not automobile or motorcycle owners, to obtain a permit to park on a public street in residential area, inasmuch as it was rational for the city to conclude that simultaneously eliminating parking options for scooters without permits and providing designated motor scooter parking areas for scooters with permits would achieve stated goal of discouraging motor scooters from parking on sidewalks.¹²

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Footnotes

- 1 [Wilson v. City of Waynesville](#), 615 S.W.2d 640 (Mo. Ct. App. S.D. 1981); [Board of Trustees of Inc. Village of Mineola v. Incorporated Village of East Williston](#), 232 A.D.2d 443, 648 N.Y.S.2d 170 (2d Dep't 1996). As to vehicle regulations discriminating against interstate commerce, see § 28.
As to the guaranty of equal protection, generally, see [Am. Jur. 2d, Constitutional Law §§ 823 to 920](#).
- 2 [Aero Mayflower Transit Co. v. Georgia Public Serv. Com'n](#), 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935); [Stanley v. Public Utilities Commission of Maine](#), 295 U.S. 76, 55 S. Ct. 628, 79 L. Ed. 1311 (1935).
- 3 [Automotive Parts & Accessories Ass'n v. Boyd](#), 407 F.2d 330 (D.C. Cir. 1968); [Hertz Drivurself Stations v. Siggins](#), 359 Pa. 25, 58 A.2d 464, 7 A.L.R.2d 438 (1948).
- 4 [Continental Baking Co. v. Woodring](#), 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
- 5 [Gutridge v. Com. of Va.](#), 532 F. Supp. 533 (E.D. Va. 1982); [City of Tulsa v. Martin](#), 1989 OK CR 24, 775 P.2d 824 (Okla. Crim. App. 1989).
- 6 [State v. Moore](#), 259 Ga. 139, 376 S.E.2d 877 (1989); [Springfield Park Dist. v. Buckley](#), 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986).
- 7 [Continental Baking Co. v. Woodring](#), 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
- 8 [Commonwealth v. Nolan](#), 189 Ky. 34, 224 S.W. 506, 11 A.L.R. 202 (1920); [City of Tulsa v. Martin](#), 1989 OK CR 24, 775 P.2d 824 (Okla. Crim. App. 1989) (seat belts in passenger cars only).
- 9 [Warner v. Leslie-Elliott Constructors, Inc.](#), 194 Conn. 129, 479 A.2d 231 (1984); [Leonard v. Parrish](#), 420 N.W.2d 629 (Minn. Ct. App. 1988) (helmet law); [American Motorcyclist Ass'n v. City of St. Louis](#), 622 S.W.2d 267 (Mo. Ct. App. E.D. 1981) (restriction on motorcycles in public parks); [Toledo v. Wacenske](#), 95 Ohio App. 3d 282, 642 N.E.2d 407 (6th Dist. Lucas County 1994) (requiring use of headlights during daylight hours).
- 10 [Springfield Park Dist. v. Buckley](#), 140 Ill. App. 3d 524, 94 Ill. Dec. 824, 488 N.E.2d 1071 (4th Dist. 1986); [American Motorcyclist Ass'n v. Park Com'n of City of Brockton](#), 412 Mass. 753, 592 N.E.2d 1314 (1992).
- 11 [People v. Staton](#), 248 Ill. App. 3d 799, 189 Ill. Dec. 76, 619 N.E.2d 777 (2d Dist. 1993).
- 12 [Myslewski v. City of Reho both Beach](#), 987 F. Supp. 2d 499 (D. Del. 2013) (applying Delaware law).

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7A Am. Jur. 2d Automobiles § 27

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

3. Validity of Regulations

§ 27. Regulations pertaining to vehicles engaged in transportation for hire

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1), 59

The use upon the public highways of motor vehicles engaged in transportation for hire may be prohibited, restricted, or conditioned by the controlling public authority.¹ This rule applies to private contract carriers² as well as to common carriers.³ Indeed, commercial motor carriers are highly regulated by the state.⁴ Municipalities may regulate and control traffic; to that end, there is a strong public interest in regulating taxicabs, which include preventing congestion on the streets, insuring traffic safety, providing its citizens with a safe and reasonably priced service, preventing unsafe driving, and insuring that competent people are servicing its citizens.⁵

Statutes and ordinances regulating vehicles and their operation upon the public ways must not unjustly discriminate between individuals or classes.⁶ Buses form a separate and distinct class of conveyance, and therefore regulations pertaining to such vehicles are not discriminatory because streetcars, taxicabs, and the like, are excluded from their operation.⁷ So too, as a general rule, "jitneys" may be subjected to different regulations than those applicable to privately owned automobiles,⁸ although an ordinance prohibiting jitneys has been held to be unconstitutional classification on the ground that it bore no substantial relationship to traffic safety.⁹ A statute allowing municipalities to regulate provision of ambulance services allows for a single provider system to be adopted in the interest of public health and safety.¹⁰ A distinction may also be made between private carriers who transport their own property for compensation and those who transport their own property without compensation.¹¹

Footnotes

- 1 Stephenson v. Binford, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932); Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932); Bucks County Services, Inc. v. Philadelphia Parking Authority, 104 A.3d 604 (Pa. Commw. Ct. 2014).
As to regulations affecting interstate commerce, see § 28.
- 2 Hicklin v. Coney, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); Stephenson v. Binford, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).
- 3 Mayor & Aldermen of Savannah v. Knight, 172 Ga. 371, 157 S.E. 309, 73 A.L.R. 1289 (1931); Village of Schaumburg v. Franberg, 99 Ill. App. 3d 1, 54 Ill. Dec. 336, 424 N.E.2d 1239 (1st Dist. 1981).
- 4 State v. Bone, 27 Kan. App. 2d 582, 6 P.3d 914 (2000).
- 5 G & C Transp., Inc. v. McGrane, 32 Misc. 3d 872, 928 N.Y.S.2d 208 (Sup 2011), order aff'd, 97 A.D.3d 817, 949 N.Y.S.2d 113 (2d Dep't 2012).
- 6 § 26.
- 7 Clem v. City of La Grange, 169 Ga. 51, 149 S.E. 638, 65 A.L.R. 1361 (1929); City of Memphis v. State, 133 Tenn. 83, 179 S.W. 631 (1915).
The Commissioner of the State Department of Transportation did not possess exclusive power to regulate bus lines within a city which had adopted an ordinance to regulate or franchise bus line operations. *City of New York v. TransportAzumah LLC*, 101 A.D.3d 465, 955 N.Y.S.2d 333 (1st Dep't 2012).
- 8 City of Memphis v. State, 133 Tenn. 83, 179 S.W. 631 (1915).
- 9 Santos v. City of Houston, Tex., 852 F. Supp. 601 (S.D. Tex. 1994).
- 10 Med Life Emergency Services, Inc. v. Ouachita Parish Police Jury, 986 So. 2d 192 (La. Ct. App. 2d Cir. 2008), writ denied, 993 So. 2d 1285 (La. 2008).
- 11 Stephenson v. Binford, 287 U.S. 251, 53 S. Ct. 181, 77 L. Ed. 288, 87 A.L.R. 721 (1932).

7A Am. Jur. 2d Automobiles § 28

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

I. In General

C. Regulation, in General

3. Validity of Regulations

§ 28. Regulations affecting interstate commerce

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 5(1)

In the absence of an Act of Congress covering the subject, a state may impose upon vehicles using its highways in interstate commerce nondiscriminatory regulations for the purpose of insuring the public safety and convenience, and for the protection and conservation of the use of such highways.¹ Generally speaking, highway regulation has been left to states and localities, and traffic laws they enact must be applied both to intrastate and interstate traffic.² Even though a local regulation materially interferes with interstate commerce, great leeway is allowed local authorities where traffic control and the use of highways are involved and where there is no conflicting federal regulation.³ For example, state legislatures have great leeway in providing safety regulations for all vehicles, interstate as well as local,⁴ such measures carrying a strong presumption of validity when challenged in the courts.⁵

If a statute is neutral on its face, has only indirect or incidental effects on interstate commerce, and regulates evenhandedly, the statute will be upheld unless the burden on such commerce is clearly excessive in relation to the putative local benefits.⁶ Thus, a state highway safety measure affecting interstate commerce will, absent federal entry into the field, be upheld, unless from the whole record it can be concluded that the total effect of the state law furthers the purpose of safety so marginally and interferes with commerce so substantially that it must be invalid.⁷

Municipalities retain considerable authority to regulate how motor vehicles engaged in interstate commerce shall be operated over their streets,⁸ and may require that such vehicles obey traffic and other general safety regulations.⁹

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Footnotes

- 1 Kassel v. Consolidated Freightways Corp. of Delaware, 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981); Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).
- 2 State v. Varsel, 2014-Ohio-1899, 11 N.E.3d 327 (Ohio Ct. App. 6th Dist. Fulton County 2014).
- 3 Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959); Railway Exp. Agency v. People of State of N.Y., 336 U.S. 106, 69 S. Ct. 463, 93 L. Ed. 533 (1949); State v. Dillon, 670 So. 2d 278 (La. Ct. App. 3d Cir. 1996).
- 4 Kassel v. Consolidated Freightways Corp. of Delaware, 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981); Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).
- 5 Kassel v. Consolidated Freightways Corp. of Delaware, 450 U.S. 662, 101 S. Ct. 1309, 67 L. Ed. 2d 580 (1981); Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959).
- 6 Government Suppliers Consolidating Services, Inc. v. Bayh, 975 F.2d 1267 (7th Cir. 1992).
- 7 Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S. Ct. 962, 3 L. Ed. 2d 1003 (1959); People v. Strawn, 210 Ill. App. 3d 783, 155 Ill. Dec. 269, 569 N.E.2d 269 (4th Dist. 1991); State v. Dillon, 670 So. 2d 278 (La. Ct. App. 3d Cir. 1996).
- 8 City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 78 S. Ct. 1063, 2 L. Ed. 2d 1174 (1958); Atchison, T. & S. F. Ry. Co. v. Public Utilities Commission of Cal., 346 U.S. 346, 74 S. Ct. 92, 98 L. Ed. 51 (1953).
- 9 City of Chicago v. Atchison, T. & S. F. Ry. Co., 357 U.S. 77, 78 S. Ct. 1063, 2 L. Ed. 2d 1174 (1958).

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II. Title and Ownership; Transfers and Encumbrances

A. Title

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Research References

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A.L.R. Index, Automobiles and Highway Traffic

A.L.R. Index, Certificates and Certification

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7A Am. Jur. 2d Automobiles § 29

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Automobiles and Highway Traffic

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II. Title and Ownership; Transfers and Encumbrances

A. Title

§ 29. Title, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 20

A.L.R. Library

[Presumption and prima facie case as to ownership of vehicle causing highway accident, 27 A.L.R.2d 167](#)

Certificates of title or registration of automobiles are indicia of their ownership and control, and, standing alone, raise an inference of legal title in the holder thereof, subject to contradiction of such fact under the ordinary rules of evidence.¹ The mere fact that one has possession of a motor vehicle is not conclusive evidence of ownership and of the right of disposal,² although a rebuttable presumption of ownership is created thereby.³ However, some authority holds that an entity is the owner of a motor vehicle upon receiving delivery of possession of the vehicle and submission of an appropriate application to the department of motor vehicles for transfer of title.⁴ Other authority holds that assignment of the certificate of title in the manner provided by statute is the exclusive and only method of transferring title to a motor vehicle.⁵

Practice Tip:

The question of ownership is one of fact to be decided by the fact-finder.⁶

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Footnotes

- 1 Cincinnati Ins. Co. v. Moen, 940 F.2d 1069 (7th Cir. 1991) (applying Indiana law); In re Castillo, 549 B.R. 916 (Bankr. D. Utah 2016) (applying Utah law); Bowen v. Gardner, 275 N.C. 363, 168 S.E.2d 47 (1969).
- 2 Matter of Stewart, 9 B.R. 32 (Bankr. M.D. Ga. 1980) (applying Georgia law); Forrest v. Benson, 150 Ark. 89, 233 S.W. 916 (1921).
- 3 Penticost v. Massey, 201 Ala. 261, 77 So. 675 (1917).
- 4 In re Bub, 528 B.R. 555 (Bankr. E.D. N.Y. 2015) (applying New York law).
- 5 Bolt v. Giordano, 310 S.W.3d 237 (Mo. Ct. App. E.D. 2010).
- 6 Botsford General Hosp. v. Citizens Ins. Co., 195 Mich. App. 127, 489 N.W.2d 137 (1992); Sosnowski v. Kolovas, 127 A.D.2d 756, 512 N.Y.S.2d 148 (2d Dep't 1987).

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II. Title and Ownership; Transfers and Encumbrances

A. Title

§ 30. Certificates of title

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West's Key Number Digest

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[Liability of state, in issuing automobile certificate of title, for failure to discover title defect, 28 A.L.R.4th 184](#)

Forms

[Am. Jur. Legal Forms 2d § 1:21 \(Affidavit—Loss of certificate of title to vehicle\)](#)

[Am. Jur. Legal Forms 2d § 33.21 \(Application—For certificate of title—In form of affidavit\)](#)

In many states, the statutes provide a system of registering the title to motor vehicles not unlike the Torrens system of registering title to real property.¹ Such statutes constitute an authorized exercise of the police power on the part of the legislature, and do not violate any of the provisions of the Federal Constitution.² Such a statute is a police regulation of the highest order and should be liberally construed to accomplish its purpose.³ The provisions of such statutes vary between jurisdictions, but they

have in common an arrangement for the issuance of a certificate of title or similar instrument which, it is intended, shall show who is the owner of the vehicle.⁴

Statutes providing a system for registering title are to be interpreted in accordance with the general purpose sought to be effectuated by them,⁵ which is to prevent theft and fraud in the transfer of title to motor vehicles.⁶ The requirement that vehicles be titled serves the purpose of protecting owners of motor vehicles, persons holding liens thereon, and the public in transactions involving vehicles.⁷ The function of a statutory scheme governing motor vehicle titles is to outline a single filing procedure for the notation of ownership and security interests in vehicles on the certificate of title.⁸ Under this unified system, parties to a commercial transaction may rely with practical certitude on the ownership and security interests inscribed on the certificate of title.⁹ A certificate of title statute is designed to allow buyers to readily and reliably ascertain the status of a seller's title without recourse to official state records.¹⁰

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Footnotes

- 1 Merchants Rating & Adjusting Co. v. Skaug, 4 Wash. 2d 46, 102 P.2d 227 (1940).
- 2 State ex rel. City Loan & Savings Co. v. Taggart, 134 Ohio St. 374, 12 Ohio Op. 517, 17 N.E.2d 758 (1938).
- 3 Reddish v. Heartland Auto Plaza, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006).
- 4 Hicks v. Thomas, 516 So. 2d 1344, 6 U.C.C. Rep. Serv. 2d 105 (Miss. 1987); Martin v. Nager, 192 N.J. Super. 189, 469 A.2d 519, 38 U.C.C. Rep. Serv. 781 (Ch. Div. 1983).
- 5 In re Bill, 529 B.R. 779 (Bankr. D. Idaho 2015) (applying Idaho law); Theriac v. McKeever, 405 So. 2d 354 (La. Ct. App. 2d Cir. 1981); Shaffer v. Federated Mut. Ins. Co., 903 S.W.2d 600 (Mo. Ct. App. S.D. 1995).
- 6 Burton v. SS Auto Inc., 426 S.W.3d 43 (Mo. Ct. App. W.D. 2014); Reddish v. Heartland Auto Plaza, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006); Allan Nott Ents, Inc. v. Nicholas Starr Auto, L.L.C., 110 Ohio St. 3d 112, 2006-Ohio-3819, 851 N.E.2d 479 (2006); Gramercy Ins. Co. v. Arcadia Financial Ltd., 32 S.W.3d 402 (Tex. App. Houston 14th Dist. 2000); Concord General Mut. Ins. Co. v. Sumner, 171 Vt. 572, 762 A.2d 849, 43 U.C.C. Rep. Serv. 2d 875 (2000).
- 7 Flynn v. Indiana Bureau of Motor Vehicles, 716 N.E.2d 988 (Ind. Ct. App. 1999); Saturn of Kings Automall, Inc. v. Mike Albert Leasing, Inc., 92 Ohio St. 3d 513, 2001-Ohio-1274, 751 N.E.2d 1019, 45 U.C.C. Rep. Serv. 2d 478 (2001).
- 8 First Nat. Bank of the North v. Automotive Finance Corp., 661 N.W.2d 668, 50 U.C.C. Rep. Serv. 2d 915 (Minn. Ct. App. 2003).
- 9 First Nat. Bank of the North v. Automotive Finance Corp., 661 N.W.2d 668, 50 U.C.C. Rep. Serv. 2d 915 (Minn. Ct. App. 2003).
- 10 Sachtjen v. American Family Mut. Ins. Co., 49 P.3d 1146 (Colo. 2002).

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7A Am. Jur. 2d Automobiles § 31

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

A. Title

§ 31. Certificates of title—As evidence of ownership

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 20

A certificate of title serves not only as a substitute recording system but also as evidence of ownership.¹ Although it has been held that compliance with the transfer provisions of a motor vehicle title statute establishes incontrovertible evidence of vehicle ownership,² generally the certificate of title is considered to be only *prima facie* evidence of ownership,³ or the primary indicia of ownership.⁴ It is not the exclusive method of proving ownership,⁵ nor does it necessarily provide conclusive evidence of ownership.⁶ It merely provides some evidence of ownership.⁷

In many jurisdictions, a certificate of title is presumptive evidence of ownership.⁸ In some jurisdictions, this presumption may only be rebutted by evidence of fraud, coercion, theft, forgery, or misrepresentation.⁹ Other jurisdictions require clear and convincing proof of actual ownership in order to rebut the presumption of ownership created by the certificate of title.¹⁰ Many jurisdictions find that the presumption may be rebutted by competent evidence of actual ownership¹¹ arising from the particular facts and circumstances of the case.¹²

CUMULATIVE SUPPLEMENT

Cases:

Under Missouri law, a vehicle's title provides only a rebuttable presumption of ownership, which can be overcome. [Nationwide Insurance Co. of America v. Swyers](#), 471 F. Supp. 3d 915 (E.D. Mo. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 McDuffie v. Com., 49 Va. App. 170, 638 S.E.2d 139 (2006).
- 2 American Nat. General Ins. Co. v. Solum, 631 N.W.2d 420 (Minn. Ct. App. 2001), aff'd, 641 N.W.2d 891 (Minn. 2002).
- 3 In re Lightfoot, 399 B.R. 141 (Bankr. E.D. Pa. 2008); Schultz v. Security Nat. Bank, 583 N.W.2d 886, 36 U.C.C. Rep. Serv. 2d 586 (Iowa 1998); State v. Watson, 151 So. 3d 120 (La. Ct. App. 2d Cir. 2014), writ denied, 180 So. 3d 305 (La. 2015); Hanson v. General Motors Corp., 241 Neb. 81, 486 N.W.2d 223 (1992); Genesee Regional Bank v. Palumbo, 9 Misc. 3d 823, 799 N.Y.S.2d 883 (Sup 2005); Unisun Ins. Co. v. First Southern Ins. Co., 319 S.C. 419, 462 S.E.2d 260 (1995); Heinrich v. Titus-Will Sales, Inc., 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).
- 4 Roy Bayer Trust v. Red Husky, LLC, 13 N.E.3d 415 (Ind. Ct. App. 2014); Van Hooser v. Banks, 816 S.W.2d 25 (Mo. Ct. App. W.D. 1991).
- 5 Pekin Ins. Co. v. Charlie Rowe Chevrolet, Inc., 556 N.E.2d 1367, 14 U.C.C. Rep. Serv. 2d 125 (Ind. Ct. App. 1990); Heinrich v. Titus-Will Sales, Inc., 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).
- 6 Cincinnati Ins. Co. v. Nelson, 668 So. 2d 539 (Ala. 1995); Matter of One 1985 Mercedes Benz Auto., 644 A.2d 423 (Del. Super. Ct. 1992); McCoolidge v. Oyvetsky, 292 Neb. 955, 874 N.W.2d 892, 89 U.C.C. Rep. Serv. 2d 67 (2016); Genesee Regional Bank v. Palumbo, 9 Misc. 3d 823, 799 N.Y.S.2d 883 (Sup 2005).
- 7 In re James, 496 B.R. 590 (Bankr. W.D. Ark. 2013); In re Ambrose, 148 B.R. 244 (Bankr. W.D. Pa. 1992) (applying Pennsylvania law); Bank South, N.A. v. Zweig, 217 Ga. App. 77, 456 S.E.2d 257 (1995); Sterling v. Capital Financial Services Inc., 480 N.E.2d 605 (Ind. Ct. App. 1985); Keyes v. Keyes, 182 W. Va. 802, 392 S.E.2d 693 (1990).
- 8 Matter of One 1985 Mercedes Benz Auto., 644 A.2d 423 (Del. Super. Ct. 1992); McCollough v. State, 612 So. 2d 697 (Fla. 1st DCA 1993); Keller v. Judd, 671 S.W.2d 604 (Tex. App. San Antonio 1984); Lake Philgas Service v. Valley Bank & Trust Co., 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993).
- 9 In re Akron-Cleveland Auto Rental, Inc., 921 F.2d 659 (6th Cir. 1990) (applying Ohio law); Nelson v. Cool, 230 Neb. 859, 434 N.W.2d 32 (1989).
- 10 McCollough v. State, 612 So. 2d 697 (Fla. 1st DCA 1993).
- 11 Pekin Ins. Co. v. U.S. Credit Funding, Ltd., 212 Ill. App. 3d 673, 156 Ill. Dec. 789, 571 N.E.2d 769 (1st Dist. 1991); Lee v. General Acc. Ins. Co., 1987-NMSC-047, 106 N.M. 22, 738 P.2d 516 (1987); Sosnowski v. Kolovas, 127 A.D.2d 756, 512 N.Y.S.2d 148 (2d Dep't 1987); Unisun Ins. Co. v. First Southern Ins. Co., 319 S.C. 419, 462 S.E.2d 260 (1995); Keyes v. Keyes, 182 W. Va. 802, 392 S.E.2d 693 (1990).
- 12 Colorado Farm Bureau Mut. Ins. Co. v. CAT Continental, Inc., 649 F. Supp. 49 (D. Colo. 1986) (applying Colorado law); Cincinnati Ins. Co. v. Nelson, 668 So. 2d 539 (Ala. 1995); In re One 1983 Toyota Silver Four-Door Sedan, VIN No. JT2MX63E4D0004378, 168 Ariz. 399, 814 P.2d 356 (Ct. App. Div. 1 1991); Landshire Food Service, Inc. v. Coghill, 709 S.W.2d 509, 1 U.C.C. Rep. Serv. 2d 729 (Mo. Ct. App. E.D. 1986); Lake Philgas Service v. Valley Bank & Trust Co., 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993).

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II. Title and Ownership; Transfers and Encumbrances

A. Title

§ 32. Certificates of title—Issuance on basis of certificate from another state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 20

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[Liability of state, in issuing automobile certificate of title, for failure to discover title defect, 28 A.L.R.4th 184](#)

A state has the authority to issue a certificate of title to an automobile from another state, based upon the evidence contained in the certificate of title issued by such other state.¹ When an application for a certificate of title is made, a state may require the surrender of the out-of-state certificate of title.²

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Footnotes

¹ [W.S. Maxwell Co. v. Southern Oregon Gas Corp.](#), 158 Or. 168, 74 P.2d 594, 114 A.L.R. 697 (1937), opinion adhered to on reh'g, 158 Or. 168, 75 P.2d 9 (1938).

² [In re Males](#), 999 F.2d 607, 21 U.C.C. Rep. Serv. 2d 108 (2d Cir. 1993) (applying New York law).

7A Am. Jur. 2d Automobiles § 33

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II. Title and Ownership; Transfers and Encumbrances

A. Title

§ 33. Certificates of registration; license plates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 20

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[Comment Note.—Who is “owner” within statute making owner responsible for injury or death inflicted by operator of automobile, 74 A.L.R.3d 739](#)

[Presumption and prima facie case as to ownership of vehicle causing highway accident, 27 A.L.R.2d 167](#)

In the sale of a used vehicle, the operative fact in the transfer of title is the assignment of title rather than the registration of title,¹ and failure to secure registration as required by statute does not void the sale of a vehicle.² It is sometimes stated, in this regard, that the registration of a motor vehicle creates a presumption or *prima facie* showing of ownership of a motor vehicle in the party in whose name the vehicle is registered,³ and that the presence of one's license plates upon a motor vehicle creates a presumption or *prima facie* showing that he or she is the owner of the vehicle.⁴ Although there is some authority for the contrary view,⁵ the presumptions arising from facts related to registration or licensing of a motor vehicle are generally not deemed conclusive but are considered to be rebuttable by the introduction of evidence to the contrary,⁶ which evidence must be undisputed, clear, and convincing.⁷ When there is competent and sufficient rebuttal evidence, ownership becomes a question of fact for the jury.⁸

Footnotes

- 1 Schultz v. Murphy, 596 S.W.2d 51 (Mo. Ct. App. E.D. 1980).
- 2 Zechlin v. Bridges Motor Sales, 190 Mich. App. 339, 475 N.W.2d 60 (1991).
- 3 Finkbiner v. Mullins, 532 A.2d 609 (Del. Super. Ct. 1987); Safeco Ins. Co. v. Lapp, 215 Mont. 196, 695 P.2d 1310, 40 U.C.C. Rep. Serv. 887 (1985); Lake Philgas Service v. Valley Bank & Trust Co., 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993); Heinrich v. Titus-Will Sales, Inc., 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).
- 4 Fulater v. Palmer's Granite Garage, Inc., 90 A.D.2d 685, 456 N.Y.S.2d 289 (4th Dep't 1982); Henry v. Condit, 152 Or. 348, 53 P.2d 722, 103 A.L.R. 131 (1936).
- 5 West Bend Mut. Ins. Co. v. Armstrong, 419 N.W.2d 848 (Minn. Ct. App. 1988).
- 6 Lake Philgas Service v. Valley Bank & Trust Co., 845 P.2d 951, 20 U.C.C. Rep. Serv. 2d 417 (Utah Ct. App. 1993); Heinrich v. Titus-Will Sales, Inc., 73 Wash. App. 147, 868 P.2d 169, 23 U.C.C. Rep. Serv. 2d 1143 (Div. 2 1994).
- 7 American Emp. Ins. Co. v. Zablosky, 292 F.2d 412 (5th Cir. 1961) (applying Texas law); Empire Gas & Fuel Co. v. Muegge, 135 Tex. 520, 143 S.W.2d 763 (Comm'n App. 1940).
- 8 Doughty v. Johnson, 155 A.D.2d 513, 547 N.Y.S.2d 373 (2d Dep't 1989).

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II. Title and Ownership; Transfers and Encumbrances

A. Title

§ 34. Bills of sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 20

In some jurisdictions, statutes have been enacted which require the execution of bills of sale in connection with the sale or transfer of motor vehicles.¹ Since such statutes are police measures and regulatory in character,² neither compliance nor noncompliance with their terms, although persuasive,³ is regarded as conclusive of the question of title.⁴

Where there is no statutory requirement that a bill of sale be executed in connection with the transfer of title to a motor vehicle, the absence of a bill of sale does not constitute evidence of nonownership.⁵

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Footnotes

1 § 40.

2 § 40.

3 *Cincinnati Ins. Co. v. Nelson*, 668 So. 2d 539 (Ala. 1995); *Worley v. Schaefer*, 228 Neb. 484, 423 N.W.2d 748, 6 U.C.C. Rep. Serv. 2d 710 (1988).

4 *Worley v. Schaefer*, 228 Neb. 484, 423 N.W.2d 748, 6 U.C.C. Rep. Serv. 2d 710 (1988).

5 *General Ins. Co. v. Hughes*, 152 Tex. 159, 255 S.W.2d 193 (1953).

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II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

[Topic Summary](#) | [Correlation Table](#)

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A.L.R. Index, Automobiles and Highway Traffic

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7A Am. Jur. 2d Automobiles § 35

American Jurisprudence, Second Edition | May 2021 Update

Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

1. In General

§ 35. Sale, transfer, and encumbrances, generally

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[Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees, 82 A.L.R.4th 624](#)

[Who is “automobile manufacturer” for purposes of the Automobile Dealer Day in Court Act \(15 U.S.C.A. secs. 1221 et seq.\), 51 A.L.R. Fed. 812](#)

The sale of motor vehicles is a lawful business which any person has a right to pursue, subject only to reasonable regulation.¹ The regulation of the business of selling motor vehicles, under the state police power, for the purpose of preventing fraud and promoting the general welfare of the public, is a proper subject for legislative action.² In adopting such regulations, the legislature may properly differentiate between dealers in new vehicles and dealers in used vehicles.³

The state's power to regulate the sale of motor vehicles includes the power to license those in the business of selling motor vehicles and to impose a fee, tax, or bond requirement on such businesses.⁴

Practice Tip:

While vehicles qualify as “goods” under the Uniform Commercial Code, the sale and recording of the sale of vehicles are regulated by the motor vehicle laws.⁵

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Footnotes

- 1 Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388, 126 A.L.R. 729 (1939); In re Hinesley, 82 S.D. 552, 150 N.W.2d 834 (1967) (statute limiting sales of new automobiles to franchised dealers held constitutional).
- 2 Faygal v. Shelter Ins. Co., 689 S.W.2d 724 (Mo. Ct. App. E.D. 1985); Nelsen v. Tilley, 137 Neb. 327, 289 N.W. 388, 126 A.L.R. 729 (1939).
- 3 Louisiana Motor Vehicle Commission v. Wheeling Frenchman, 235 La. 332, 103 So. 2d 464 (1958); In re Hinesley, 82 S.D. 552, 150 N.W.2d 834 (1967).
As to business of selling second-hand property, generally, see Am. Jur. 2d, Occupations, Trades, and Professions §§ 49 to 54
4 § 162.
- 5 Quartz of Southern California, Inc. v. Mullen Bros., Inc., 151 Cal. App. 4th 901, 61 Cal. Rptr. 3d 54, 63 U.C.C. Rep. Serv. 2d 417 (4th Dist. 2007).

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7A Am. Jur. 2d Automobiles § 36

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

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§ 36. Requirements as to certificates of title

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Forms

[Am. Jur. Legal Forms 2d § 33.13 \(Power of attorney—To register or transfer motor vehicle\)](#)

In many jurisdictions where provision is made for the issuance of certificates of title to motor vehicles, the sale or transfer of a motor vehicle is consummated by the assignment of the certificate of title to the purchaser or transferee in the method prescribed by statute.¹ In most of these jurisdictions such statutory provisions are viewed as merely police measures, regulatory in character, and are not meant to establish an exclusive method of transfer of title to a motor vehicle.² These statutes create a “registration” type system, under which a certificate of title creates a right to register and use a vehicle on the public roads, rather than an “ownership” type system, under which legal title does not pass until a title certificate passes.³ Accordingly, ownership may change hands without the necessity of transferring a title certificate by the seller and obtaining a new one in the name of the purchaser.⁴

In other jurisdictions, however, the statutory provisions as to the assignment of the certificate of title to a motor vehicle upon the sale or transfer of the vehicle are viewed as absolute and mandatory and are rigidly enforced by the courts, and title does not pass without adherence to such provisions.⁵ In a strict title state, assignment of the certificate of title in the manner provided by

statute is the exclusive and only method of transferring title to a motor vehicle.⁶ This is true regardless of whether the transfer from the owner is made by way of sale or gift or is effected by operation of law.⁷ Nevertheless, the mandates of the statute can be relaxed in appropriate circumstances.⁸

Observation:

Filling in an erroneous odometer reading in violation of a certificate of title statute does not void a transfer as to third parties later in the chain of title.⁹ It would be too onerous a burden on commerce if every purchaser of an automobile had to verify the odometer reading of every transfer in his or her chain of title or risk there being a void transaction.¹⁰

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Footnotes

- 1 Aetna Cas. & Sur. Co. v. A.L.J.A., Inc., 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); Jones v. Mitchell, 816 So. 2d 68, 46 U.C.C. Rep. Serv. 2d 1000 (Ala. Civ. App. 2001); Libertyville Toyota v. U.S. Bank, 371 Ill. App. 3d 1009, 309 Ill. Dec. 609, 864 N.E.2d 850 (1st Dist. 2007); Kirkpatrick v. BankAmerica Housing Services, a Div. of Bank of America, FSB, 799 So. 2d 831 (La. Ct. App. 2d Cir. 2001); Oliver v. Cameron Mut. Ins. Co., 866 S.W.2d 865 (Mo. Ct. App. E.D. 1993); Baydo's Trailer Sales, Inc. v. Department of Licensing, 32 Wash. App. 332, 647 P.2d 55 (Div. 2 1982); In re Superior Ground Support, Inc., 140 B.R. 878, 18 U.C.C. Rep. Serv. 2d 576 (Bankr. W.D. Mich. 1992) (applying Michigan law); Burchett v. Burchett, 2016 WL 2855384 (Ky. Ct. App. 2016); Allen v. Jones, 372 S.W.3d 441 (Ky. Ct. App. 2012).
- 2 Singletary, III v. P & A Investments, Inc., 212 N.C. App. 469, 712 S.E.2d 681, 74 U.C.C. Rep. Serv. 2d 830 (2011).
- 3 As to certificates of title, generally, see § 30.
- 4 State Farm Mut. Auto. Ins. Co. v. Scott, 866 F. Supp. 2d 680 (S.D. Tex. 2012) (applying Texas law); In re Jones, 544 B.R. 692 (Bankr. M.D. Ala. 2016); Commercial Credit Co. v. McNelly, 36 Del. 88, 171 A. 446 (Super. Ct. 1934); Pekin Ins. Co. v. Charlie Rowe Chevrolet, Inc., 556 N.E.2d 1367, 14 U.C.C. Rep. Serv. 2d 125 (Ind. Ct. App. 1990); Wille v. Courtney, 943 So. 2d 515 (La. Ct. App. 5th Cir. 2006), writ denied, 948 So. 2d 167 (La. 2007).
- 5 Madrid v. Bloomington Auto Co., Inc., 782 N.E.2d 386, 49 U.C.C. Rep. Serv. 2d 795 (Ind. Ct. App. 2003).
- 6 Smith v. Hardeman, 281 Ga. App. 402, 636 S.E.2d 106, 61 U.C.C. Rep. Serv. 2d 304 (2006).
- 7 Perry v. Goff Motors, Inc., 12 Kan. App. 2d 139, 736 P.2d 949, 3 U.C.C. Rep. Serv. 2d 1805 (1987); Rogers v. Wheeler, 864 S.W.2d 892 (Ky. 1993); Bolt v. Giordano, 310 S.W.3d 237 (Mo. Ct. App. E.D. 2010); Reddish v. Heartland Auto Plaza, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006); Bissette v. Auto-Owners Ins. Co., 208 N.C. App. 321, 703 S.E.2d 168 (2010); Thompson Cadillac-Oldsmobile, Inc. v. Silk Hope Auto., Inc., 87 N.C. App. 467, 361 S.E.2d 418 (1987).
- 8 Jackson v. Cannon, 147 S.W.3d 168 (Mo. Ct. App. S.D. 2004).
- 9 Jackson v. Cannon, 147 S.W.3d 168 (Mo. Ct. App. S.D. 2004).
- 10 Rockwood Bank v. Camp, 984 S.W.2d 868 (Mo. Ct. App. E.D. 1999).
- 11 Perry v. Breland, 16 S.W.3d 182 (Tex. App. Eastland 2000).
- 12 Perry v. Breland, 16 S.W.3d 182 (Tex. App. Eastland 2000).

Noncompliance with statute as not precluding purchaser from asserting title against third person, see [§ 54](#).

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7A Am. Jur. 2d Automobiles § 37

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

1. In General

§ 37. Requirements as to certificates of title—Notation of liens or encumbrances

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

Forms

Forms regarding automobile titles, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic
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Statutory provision is also made for the notation upon the certificate of title to a motor vehicle of encumbrances to which the vehicle is subject.¹ In some jurisdictions, the notation of encumbrances upon the certificate of title in the manner required by statute is a substitute for the recording of such encumbrances in accordance with the general statutes relating to such encumbrances.² The notation of the encumbrance upon the certificate of title in the proper manner operates as notice to subsequent purchasers or encumbrancers of the existence of such encumbrances.³

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Footnotes

¹ [Aurora Nat. Bank of Aurora, Ill. v. Ed Fanning Chevrolet, Inc.](#), 85 Ill. App. 2d 394, 229 N.E.2d 2 (2d Dist. 1967); [Baydo's Trailer Sales, Inc. v. Department of Licensing](#), 32 Wash. App. 332, 647 P.2d 55 (Div. 2 1982).

- 2 In re Brown, 55 B.R. 172 (Bankr. W.D. Mo. 1985) (applying Missouri law); Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867, 41 U.C.C. Rep. Serv. 1453 (1985); Milwaukee Mack Sales, Inc. v. First Wisconsin Nat. Bank of Milwaukee, 93 Wis. 2d 589, 287 N.W.2d 708, 28 U.C.C. Rep. Serv. 540 (1980) (exclusive means of enforcing).
- 3 General Motors Acceptance Corp. v. Rupp, 951 F.2d 283, 16 U.C.C. Rep. Serv. 2d 510 (10th Cir. 1991) (applying Utah law); Barry & Associates, Inc. v. General Motors Acceptance Corp. of Canada, Limited, 262 So. 2d 891 (Fla. 2d DCA 1972).

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7A Am. Jur. 2d Automobiles § 38

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

1. In General

§ 38. Requirements as to certificates of title—Applicability to dealers and manufacturers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

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[Validity, construction, and application of state statutes regulating dealings between automobile manufacturers, dealers, and franchisees, 82 A.L.R.4th 624](#)

Forms

Forms regarding automobile titles, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic
[\[Westlaw®\(r\) Search Query\]](#)

Statutes which require the procurement of a certificate of title as a condition precedent to the right to sell or transfer a motor vehicle frequently exempt therefrom manufacturers and dealers of new vehicles.¹ These statutes usually exclude the necessity

of applying for a certificate of title until after the first sale of a new vehicle to a user.² Thereupon the dealer obtains the certificate of title in the name of the purchaser or user.³

Caution:

If a dealer wishes to effectively transfer ownership of a vehicle without simultaneously transferring possession of the certificate of title, the dealer must obtain the purchaser's consent to file the certificate of title and other documents on behalf of the purchaser, and the dealer must verify that the purchaser has obtained insurance on the vehicle before relinquishing possession.⁴

If a transfer of a title in an automobile occurs and the buyer uses a forged title document, it constitutes a void transfer and does not convey title to the buyer.⁵

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Footnotes

- 1 Aetna Cas. & Sur. Co. v. A.L.J.A., Inc., 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995); Bruckner Truck Sales, Inc. v. Farm Credit Leasing Services Corp., 909 S.W.2d 75 (Tex. App. Amarillo 1995); Concord General Mut. Ins. Co. v. Sumner, 171 Vt. 572, 762 A.2d 849, 43 U.C.C. Rep. Serv. 2d 875 (2000).
- 2 Aetna Cas. & Sur. Co. v. A.L.J.A., Inc., 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); Commercial Securities Co. v. Hugh Roberson Motors, Inc., 229 La. 959, 87 So. 2d 306 (1956); Bruckner Truck Sales, Inc. v. Farm Credit Leasing Services Corp., 909 S.W.2d 75 (Tex. App. Amarillo 1995).
- 3 Aetna Cas. & Sur. Co. v. A.L.J.A., Inc., 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); Gibson v. Bolner, 165 Ohio St. 357, 59 Ohio Op. 467, 135 N.E.2d 353 (1956).
- 4 Gainsco Companies v. Gentry, 191 S.W.3d 633 (Ky. 2006).
- 5 Genesee Regional Bank v. Palumbo, 9 Misc. 3d 823, 799 N.Y.S.2d 883 (Sup 2005).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

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1. In General

§ 39. Requirements as to certificates of registration

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

In most jurisdictions motor vehicles are required to be registered in the name of the owner, such requirement being in the nature of a police regulation for the purpose of identification.¹ Registration ordinarily expires upon the transfer of ownership of the vehicle, and the seller of a registered motor vehicle is required to execute a transfer of registration so that the purchaser may obtain registration in his or her own name.²

The transfer of ownership of a vehicle is not effective until the original owner delivers the certificates of title and registration to the transferee at the time of delivery of the vehicle; failure of delivery of the title and registration, however, only creates a presumption that there has been no delivery until title has passed properly, which presumption can be rebutted by a showing that there has actually been a delivery and that ownership has actually passed in conformity with the true intentions of the parties.³

Insofar as a mortgage is not a transfer of the ownership of a motor vehicle or an interest therein, but merely a lien, the mortgagor not being entitled to either the certificate of registration or the possession of the vehicle, the requirements as to the transfer of a certificate of registration have no application to a mortgage.⁴

As to motor vehicles, a vehicle license and registration act, allowing any of multiple owners joined by "and/or" on a vehicle title to assign ownership, controls over contrary common law applicable to real property.⁵ Thus, a stepfather's transfer to his daughter of title to two vehicles that were previously titled in the name of the stepfather "and/or" stepson is effective to transfer legal ownership of the vehicles, and thus the stepfather's daughter was the sole owner of the vehicles following the transfer,

where the regulation implementing the applicable statute allowed any of multiple owners joined by "and/or" on a vehicle title to assign ownership.⁶

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Footnotes

- 1 § 93.
- 2 *Durbin v. Fletcher*, 165 Cal. App. 3d 334, 211 Cal. Rptr. 483 (5th Dist. 1985); *Red Bird Motors, Inc. v. Endsley*, 657 S.W.2d 954 (Ky. Ct. App. 1983).
- 3 *Roberson v. Manning*, 268 P.3d 1090 (Alaska 2012).
- 4 *In re Senetos*, 29 F.2d 854 (D. Cal. 1928) (applying California law).
- 5 *Pope v. Fulton*, 2013 OK CIV APP 84, 310 P.3d 1110 (Div. 3 2013).
- 6 *Pope v. Fulton*, 2013 OK CIV APP 84, 310 P.3d 1110 (Div. 3 2013).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

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1. In General

§ 40. Requirements as to bills of sale

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19

In some jurisdictions, statutes have been enacted which require the seller of a motor vehicle to furnish to the buyer a bill of sale and to note thereon any retained security interest.¹ Such statutes do not seek to discourage or limit or control the volume or character of the business of selling motor vehicles, but rather to encourage it by affording additional protection from fraud and theft to those who deal in such property.²

Such a statute is a penal statute which is not intended to affect the validity of contracts or titles or rights of property and is not designed to repeal or interfere with the statutes relating to conditional sales, chattel mortgages, or the uniform law of sales in transactions relating to motor vehicles. As a penal statute it should be strictly construed according to its exact and technical meaning, recognizing nothing that is not expressed, and limiting its application to cases clearly described within the words used.³

A bill of sale is among the factors that are evidence of equitable ownership of a motor vehicle.⁴

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Footnotes

¹ [Securities Acceptance Corp. v. Perkins](#), 182 Kan. 169, 318 P.2d 1058 (1957); [State v. Malstrom](#), 672 A.2d 448 (R.I. 1996).

² [Commercial Credit Co. v. Schreyer](#), 120 Ohio St. 568, 7 Ohio L. Abs. 333, 166 N.E. 808, 63 A.L.R. 674 (1929).

- 3 [Commercial Credit Co. v. Schreyer](#), 120 Ohio St. 568, 7 Ohio L. Abs. 333, 166 N.E. 808, 63 A.L.R. 674
 (1929).
- 4 [In re Castillo](#), 549 B.R. 916 (Bankr. D. Utah 2016) (applying Utah law).

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7A Am. Jur. 2d Automobiles § 41

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

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§ 41. Application of transfer requirements to involuntary transfers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

In some jurisdictions, the statutory transfer requirements are inapplicable to involuntary transfers, such as repossessions for failure to make payments as required by a conditional sales agreement.¹ The validity of such statutory provisions has been upheld, as against the contention that such provisions are unconstitutional as significant state acts which deprive a purchaser under a conditional sales contract of property without procedural safeguards.²

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Footnotes

¹ [Kipp v. Cozens](#), 40 Cal. App. 3d 709, 115 Cal. Rptr. 423, 14 U.C.C. Rep. Serv. 1453 (1st Dist. 1974).

² [Kipp v. Cozens](#), 40 Cal. App. 3d 709, 115 Cal. Rptr. 423, 14 U.C.C. Rep. Serv. 1453 (1st Dist. 1974).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

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1. In General

§ 42. Price control; disclosure of price information

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A legislature may not, under the guise of regulation, indulge in what in effect is arbitrary price fixing or interference with lawful competition with respect to the business of selling motor vehicles.¹

By federal statute, every manufacturer of new automobiles distributed in interstate or foreign commerce is required, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, to securely affix to the windshield or side window of such automobile a label on which such manufacturer must endorse clearly, distinctly, and legibly true and correct entries disclosing certain information about the vehicle, including, among other things, the model, make, and serial or identification number of the automobile, the manufacturer's suggested retail price for the vehicle and each item of optional equipment attached thereto, and the amount charged to the dealer, if any, for the transportation of such vehicle to the dealer.² The purpose of such statute is to prevent misbranding, abuse of caravan car prices, and "packing" of prices.³ The failure of a manufacturer to affix the required label subjects it to a specified fine, such failure with respect to each automobile constituting a separate offense.⁴ Similarly, the failure of a manufacturer to endorse the label as required by the statute, or the making of a false endorsement, will also subject the manufacturer to a fine, with each failure or false endorsement with respect to each automobile constituting a separate offense.⁵ In addition, the willful removal or alteration of such a label prior to its delivery to the ultimate purchaser also constitutes an offense punishable by a fine or imprisonment or both.⁶

In order to be actionable under a state unfair trade practices law, a preowned vehicle seller's under-reporting of the vehicle's purchase price must be predicated upon an act or practice that was misleading in a material way, or an act or practice that was consumer oriented.⁷

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Footnotes

- 1 Rebsamen Motor Co. v. Phillips, 226 Ark. 146, 289 S.W.2d 170, 57 A.L.R.2d 1256 (1956).
- 2 15 U.S.C.A. § 1232.
- 3 Plymouth Dealers' Ass'n of No. Cal. v. United States, 279 F.2d 128 (9th Cir. 1960).
- 4 15 U.S.C.A. § 1233(a).
- 5 15 U.S.C.A. § 1233(b).
- 6 15 U.S.C.A. § 1233(c).
- 7 Harmon v. Major Chrysler Jeep Dodge, Inc., 101 A.D.3d 679, 955 N.Y.S.2d 357 (2d Dep't 2012).

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7A Am. Jur. 2d Automobiles § 43

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II. Title and Ownership; Transfers and Encumbrances

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§ 43. Defects found before sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Automobiles](#)  19

Under the terms of a federal statute, if a manufacturer or distributor sells a motor vehicle or motor vehicle equipment to a distributor or dealer and prior to the distributor's or dealer's sale of the vehicle or equipment determines that the vehicle or equipment contains a defect related to safety or that does not comply with applicable safety standards, then the manufacturer or distributor must either: (1) repurchase the vehicle or equipment and incur transportation and other charges, or (2) in the case of a vehicle, provide, at the manufacturer's or distributor's expense, the part or equipment needed to make the vehicle comply with the standards or correct the defect.¹ If the dealer or distributor installs the corrective part, he or she is entitled to reimbursement from the manufacturer of, among other things, the reasonable value of the installation.² The statute also provides for civil actions for noncompliance with the terms of the statute.³

It is further provided by federal statute that the Secretary of Transportation may require manufacturers of motor vehicles or motor vehicle equipment to provide technical information related to performance and safety to purchasers and prospective purchasers.⁴ Motor vehicle and tire manufacturers and, under certain circumstances, distributors and dealers, are also required to maintain a record of the name and address of the first purchasers of each automobile or tire.⁵ A distributor or dealer of tires that is not owned or controlled by a manufacturer of tires must maintain records of the name and address of tire purchasers and lessors identifying the tire that was purchased or leased, and must electronically transmit those records to the tire manufacturer or a designee.⁶ In addition, the Secretary is directed to develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program, and to carry out a program of conducting such tests.⁷

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Footnotes

- 1 49 U.S.C.A. § 30116(a).
- 2 49 U.S.C.A. § 30116(b).
- 3 49 U.S.C.A. § 30116(c).
- 4 49 U.S.C.A. § 30117(a).
- 5 49 U.S.C.A. § 30117(b).
- 6 49 U.S.C.A. § 30117(b).
- 7 49 U.S.C.A. § 30117(c).

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7A Am. Jur. 2d Automobiles § 44

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

§ 44. Sale, transfer, or encumbrance of vehicle already encumbered or owned by another, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19

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[Priority as between artisan's lien and chattel mortgage, 36 A.L.R.2d 229](#)

[Priority as between lien for repairs and the like, and right of seller under conditional sales contract, 36 A.L.R.2d 198](#)

Forms

Forms regarding purchase or sale of automobile, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [[Westlaw®\(r\) Search Query](#)]

The sale, transfer, or encumbrance by a third person of a motor vehicle owned by another will not ordinarily operate to deprive the legal owner of his or her rights therein—the mere entrusting of such third person with the possession of the motor vehicle

does not constitute a holding out of such third person as owner so as to estop the true owner from claiming or asserting his or her rights therein.¹ Nor will the sale, transfer, or encumbrance of a motor vehicle already subject to an encumbrance ordinarily operate to deprive the encumbrancer of his or her security interest in the vehicle.² These rules are particularly applicable where the owner or encumbrancer has retained possession of the certificate of title to the motor vehicle, issued in accordance with statute.³ Implicit in such statutes is the idea that when one in possession of a motor vehicle is unable to exhibit a certificate of title therefore, artisans and others are charged with notice that the possessor of the vehicle may have no title thereto, or that his or her title may be subject to the prior rights and interests of others.⁴ Thus, where a repairer or other artisan fails to ascertain his or her customer's title to the motor vehicle by an inspection of the certificate of title, a conditional vendor's⁵ or chattel mortgagee's⁶ title or interest which could have been ascertained by such inspection will have priority over any lien of the repairer or artisan.

As alternate owners, each party on an "OR" motor vehicle title has the ability to unilaterally transfer complete ownership of the vehicle to another.⁷

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Footnotes

- 1 *Forrest v. Benson*, 150 Ark. 89, 233 S.W. 916 (1921); *Bustin v. Craven*, 1953-NMSC-103, 57 N.M. 724, 263 P.2d 392 (1953); *Kaminsky v. Karmin*, 187 A.D.2d 488, 589 N.Y.S.2d 588, 19 U.C.C. Rep. Serv. 2d 1073 (2d Dep't 1992).
- 2 *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953).
- 3 *Standard Motor Co. v. American Loan System*, 120 Colo. 311, 209 P.2d 264 (1949); *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953); *Kaminsky v. Karmin*, 187 A.D.2d 488, 589 N.Y.S.2d 588, 19 U.C.C. Rep. Serv. 2d 1073 (2d Dep't 1992).
- 4 *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953); *Kaminsky v. Karmin*, 187 A.D.2d 488, 589 N.Y.S.2d 588, 19 U.C.C. Rep. Serv. 2d 1073 (2d Dep't 1992).
- 5 *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953).
- 6 *Personal Finance Co. of Hammond v. Flecknoe*, 216 Ind. 330, 24 N.E.2d 694 (1940); *City Finance Co. v. Perry*, 195 Tenn. 81, 257 S.W.2d 1, 36 A.L.R.2d 224 (1953).
- 7 *In re Resler*, 551 B.R. 835 (Bankr. D. Idaho 2016) (applying Idaho law).

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7A Am. Jur. 2d Automobiles § 45

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

§ 45. Transfer by one in possession of certificate of title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

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[Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813](#)

Forms

Forms regarding purchase or sale of automobiles, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic [[Westlaw®\(r\) Search Query](#)]

Even though a certificate of title to a motor vehicle is generally not conclusive proof of ownership of such vehicle,¹ purchasers and encumbrancers do place reliance thereon.² Where the owner or an encumbrancer permits another to have possession of the motor vehicle and a certificate of title thereto, particularly one not indicating the rights of the former, the former may be

estopped to assert his or her rights as against a subsequent purchaser or encumbrancer of such vehicle.³ Thus, where a mortgagee of a motor vehicle permits the mortgagor to retain possession of the vehicle and a certificate of title which does not show the lien of the mortgage, a purchaser for value without actual notice of the encumbrance who relies upon the certificate as indicating good title in the holder will generally be protected against the assertion of the mortgage lien.⁴ Filing of a motor vehicle chattel mortgage under the recordation statutes has often been held to be insufficient to charge with notice a purchaser for value without actual notice of the mortgage who in buying relies upon his or her seller's possession of a certificate of title showing no liens.⁵ However, where the statute providing for the endorsement of liens or encumbrances upon the certificate of title specifically excludes purchase-money mortgages from its operation, the recordation of such a mortgage constitutes notice to all the world, including a purchaser for value without actual knowledge of the mortgage who in buying relies upon his or her seller's possession of a certificate of title showing no liens.⁶

The purchaser of a motor vehicle relying upon the fact that his or her seller displays a certificate of title showing no liens or encumbrances will not be protected as to prior lienholders if there were other circumstances charging the buyer with notice of irregularities in the seller's title.⁷

The rule that a lienholder may be estopped to assert his or her rights as to an innocent purchaser by his or her failure to take advantage of a statutory provision for the notation of liens upon the certificate of title has also been applied to protect purchasers from a conditional vendee who has been permitted to retain a title certificate showing no liens.⁸ A conditional vendor of a motor vehicle will not, however, have his or her interest subjected to that of an innocent purchaser relying upon the conditional vendee's possession of such a certificate if the certificate was obtained without fault on the part of the conditional vendor.⁹ However, the mere fact that a conditional vendee acts fraudulently in obtaining a certificate of title showing no liens does not mean that the conditional vendor will be protected as against an innocent purchaser relying upon the certificate, if the conditional vendor's acts made the fraud possible.¹⁰

In cases involving attempted sales of motor vehicles by persons who had obtained possession of the vehicles or the accompanying documents of title or both by outright theft, the rights of the true owners of the vehicles have been protected as against subsequent purchasers.¹¹

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Footnotes

- ¹ § 30.
- ² *Champa v. Consolidated Finance Corp.*, 231 Ind. 580, 110 N.E.2d 289, 36 A.L.R.2d 185 (1953).
- ³ *Karibian v. Paletta*, 122 Mich. App. 353, 332 N.W.2d 484, 36 U.C.C. Rep. Serv. 466 (1983); *Landshire Food Service, Inc. v. Coghill*, 709 S.W.2d 509, 1 U.C.C. Rep. Serv. 2d 729 (Mo. Ct. App. E.D. 1986) (if the subsequent purchaser has no notice of the owner's rights).
- ⁴ *Suburban Motors, Inc. v. State Farm Mut. Auto. Ins. Co.*, 218 Cal. App. 3d 1354, 268 Cal. Rptr. 16, 11 U.C.C. Rep. Serv. 2d 56 (3d Dist. 1990); *Reid v. Tinker Auto Sales, Inc.*, 1990 OK CIV APP 3, 786 P.2d 714 (Ct. App. Div. 4 1990); *South Texas Bank v. Renteria*, 523 S.W.2d 780 (Tex. Civ. App. Corpus Christi 1975).
- ⁵ *Suburban Motors, Inc. v. State Farm Mut. Auto. Ins. Co.*, 218 Cal. App. 3d 1354, 268 Cal. Rptr. 16, 11 U.C.C. Rep. Serv. 2d 56 (3d Dist. 1990); *Commercial Credit Corp. v. Kemp*, 176 Kan. 350, 270 P.2d 209 (1954); *Mohr to Use of Universal C.I.T. Credit Corp. v. Sands*, 213 Md. 206, 131 A.2d 732 (1957).
- ⁶ *Interstate Securities Co. v. Barton*, 236 Mo. App. 325, 153 S.W.2d 393 (1941).
- ⁷ *Peper v. American Exchange Nat. Bank in St. Louis*, 357 Mo. 652, 210 S.W.2d 41 (1948); *Landshire Food Service, Inc. v. Coghill*, 709 S.W.2d 509, 1 U.C.C. Rep. Serv. 2d 729 (Mo. Ct. App. E.D. 1986).
- ⁸ *Washington Lumber & Millwork Co. v. McGuire*, 213 Cal. 13, 1 P.2d 437 (1931); *Industrial Credit Co. v. Billion Motors, Inc.*, 74 S.D. 612, 57 N.W.2d 523 (1953).

- 9 Clanton v. Thigpen, 226 S.W.2d 850 (Tex. Civ. App. Eastland 1950).
10 Hedger v. Hogle, 89 Cal. App. 354, 264 P. 807 (1st Dist. 1928).
11 Winship v. Standard Finance Co., 40 Ariz. 382, 12 P.2d 282 (1932); Northern Ins. Co. of New York v. Miller, 256 Iowa 764, 129 N.W.2d 28 (1964) (innocent purchaser from thief gets no title although he received apparently valid certificate of title); Hardware Mut. Cas. Co. v. Gall, 15 Ohio St. 2d 261, 44 Ohio Op. 2d 448, 240 N.E.2d 502 (1968); McKinney v. Croan, 144 Tex. 9, 188 S.W.2d 144 (1945).

7A Am. Jur. 2d Automobiles § 46

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

§ 46. Transfer by one in possession of certificate of title —Possession by purchaser who has given bad check

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19

A.L.R. Library

[Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813](#)

A situation frequently arises where the seller of a motor vehicle, after taking a check in payment, delivers the vehicle and a certificate of title to the purchaser, and the latter transfers it to an innocent purchaser for value before the seller learns that the check was forged or is otherwise bad. In such circumstances a preliminary issue is raised as to whether the original purchaser received any title which he or she could convey to an innocent purchaser. If it is found that he or she did receive even a voidable title, generally the innocent purchaser, relying upon the possession of the vehicle and the certificate of title, will be protected against the claims of the original seller.¹ However, such purchaser will not be protected as against the original owner where he or she is put on notice by defects in the face of the certificate or by other circumstances, or is otherwise at fault.²

Under a statute providing that no sale can divest the owner of rights to property obtained by larceny, an owner whose motor vehicle and certificate of title thereto are obtained by a forged check and false impersonation, constituting larceny, is entitled to recover the vehicle from an innocent purchaser; the doctrine of equitable estoppel is not applicable under such a statute.³

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Footnotes

- 1 Aclin v. Manhattan Credit Corp., 225 Ark. 1028, 287 S.W.2d 451 (1956); General Credit Corp. v. Bill Olsen's Motor, Inc., 147 Colo. 227, 363 P.2d 489 (1961).
- 2 Wills v. Shepherd, 241 Mo. App. 102, 231 S.W.2d 843 (1950).
- 3 Richardson v. Seattle-First Nat. Bank, 38 Wash. 2d 314, 229 P.2d 341 (1951).

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7A Am. Jur. 2d Automobiles § 47

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II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

§ 47. Transfer by one in possession of certificate of title—Possession by agent of owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

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[Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813](#)

Forms

Forms regarding title of automobile, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic
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It is a fairly common practice for owners of motor vehicles to deliver them to dealers or other agents for the purpose of making a sale, and where the sales agent is also entrusted with the certificate of title and uses it to make an unauthorized sale or encumbrance of the vehicle, the question of estoppel based upon possession of indicia of ownership is presented. Since the

actual purpose of such an arrangement is to facilitate sale, the courts are inclined to protect innocent purchasers in such a situation, and an estoppel has frequently been raised to protect such purchasers.¹ However, such a purchaser is not entitled to rely upon the possession of the vehicle and the certificate of title where the certificate itself is of such form as to cast doubt on the title offered, or other circumstances are such as to put the purchaser on notice.² Possession by a dealer of the certificate of title alone, the actual owner retaining possession of the vehicle, is insufficient to justify reliance upon the dealer's ownership.³

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Footnotes

- 1 [Karibian v. Paletta](#), 122 Mich. App. 353, 332 N.W.2d 484, 36 U.C.C. Rep. Serv. 466 (1983); [Garbark v. Newman](#), 155 Neb. 188, 51 N.W.2d 315 (1952); [Ruddy v. Oregon Auto. Credit Corp.](#), 179 Or. 688, 174 P.2d 603 (1946).
- 2 [Karibian v. Paletta](#), 122 Mich. App. 353, 332 N.W.2d 484, 36 U.C.C. Rep. Serv. 466 (1983); [Rasmussen v. O. E. Lee & Co.](#), 104 Mont. 278, 66 P.2d 119 (1937); [Swartz v. White](#), 80 Utah 150, 13 P.2d 643 (1932).
- 3 [San Joaquin Valley Sec. Co. v. Prather](#), 123 Cal. App. 378, 11 P.2d 45 (4th Dist. 1932).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

§ 48. Transfer by one in possession of certificate of registration

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

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[Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813](#)

In some cases, it has been held that where one having the legal ownership of a motor vehicle under some security arrangement permits the debtor to have possession of the vehicle and the registration certificate thereto, one buying the vehicle from the debtor in reliance upon such possession and without actual notice of the creditor's rights will be protected.¹ Moreover, delivery of a motor vehicle and registration certificate to an agent for the purpose of negotiating a sale has sometimes been held to be such negligence as will justify raising an estoppel in favor of an innocent purchaser from the agent,² although under the circumstances of other cases, the purchaser has been held not to be protected as against the true owner.³

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Footnotes

- 1 Parke v. Franciscus, 194 Cal. 284, 228 P. 435 (1924).
2 Commercial Credit Corp. v. Dassenko, 77 N.D. 412, 43 N.W.2d 299 (1950).
3 Royle v. Worcester Buick Co., 243 Mass. 143, 137 N.E. 531 (1922); Moberg v. Commercial Credit Corp.,
 230 Minn. 469, 42 N.W.2d 54 (1950).

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7A Am. Jur. 2d Automobiles § 49

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II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

2. Sale, Transfer, or Encumbrance of Vehicle Already Encumbered or Owned by Another

§ 49. Transfer by one in possession of bill of sale or other ordinary document of title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

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[Motor vehicle certificate of title or similar document as, in hands of one other than legal owner, indicia of ownership justifying reliance by subsequent purchaser or mortgagee without actual notice of other interests, 18 A.L.R.2d 813](#)

Under proper circumstances, the courts will protect the innocent purchaser of a motor vehicle relying upon the possession of the vehicle together with such evidences of title as a bill of sale, invoice, or other document indicating on its face that the purchase price has been paid and the title transferred to the purchaser.¹ Thus, where one holding legal ownership of a motor vehicle as security permits his or her debtor to have possession of the vehicle and a bill of sale thereto indicating that ownership has passed, a purchaser from such a debtor is entitled to rely upon such possession as an indication of ownership.² However, the fact that the bill of sale relied upon by the purchaser was obtained by the debtor without fault of the legal owner of the vehicle, or that, for various reasons, the purchaser was at fault in relying upon the bill of sale, will preclude the finding of an estoppel.³

Delivery of a motor vehicle and bill of sale or invoice to a purchaser who gives a bad check in payment and then transfers it to an innocent purchaser for value who relies upon such possession is often a ground for estoppel as against the original seller,

insofar as the fraudulent purchaser is regarded as having obtained at least a voidable title.⁴ However, there is some authority to the contrary.⁵

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Footnotes

- 1 Walker v. Johnson, 354 So. 2d 792 (Miss. 1978).
- 2 Weber & Beckett v. Le Clair, 118 Cal. App. 423, 5 P.2d 449 (1st Dist. 1931).
- 3 Greene v. Carmichael, 24 Cal. App. 27, 140 P. 45 (3d Dist. 1914).
- 4 Shockley v. Hill, 91 Colo. 451, 15 P.2d 623 (1932); Woods v. Thompson, 159 Fla. 112, 31 So. 2d 62 (1947); Crescent Chevrolet Co. v. Lewis, 230 Iowa 1074, 300 N.W. 260 (1941); Jeffrey Motor Co. v. Higgins, 230 La. 857, 89 So. 2d 369 (1956).
- 5 Dobbins v. Martin Buick Co., 216 Ark. 861, 227 S.W.2d 620 (1950); Wallich v. Sandlovich, 111 Neb. 318, 196 N.W. 317 (1923).

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7A Am. Jur. 2d Automobiles § 50

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II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

3. Noncompliance with Statute as to Sales, Transfers, or Encumbrances

§ 50. Noncompliance with statute as to sales, transfers, or encumbrances, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19, 20

Noncompliance with those statutory requirements which relate specifically to the sale, transfer, or encumbrance of a motor vehicle ordinarily subjects one to a specified fine or penalty.¹ However, some certificate of title statutes do not prohibit or provide penalties for persons who have transferred interest in motor vehicles without compliance with the provisions thereof.²

In some jurisdictions, equitable title to a vehicle passes at the time of delivery, which means that transfer of the property interest in a motor vehicle is effective as between the immediate parties even though they have not complied with the registration statute.³ In other jurisdictions, the purported transfer of a motor vehicle which is not done in compliance with the state certificate of title law is void.⁴

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Footnotes

¹ [Aetna Cas. & Sur. Co. v. Duncan](#), 972 F.2d 523 (3d Cir. 1992) (applying Pennsylvania law); [Dugdale of Nebraska, Inc. v. First State Bank, Gothenburg](#), Neb., 227 Neb. 729, 420 N.W.2d 273, 6 U.C.C. Rep. Serv. 2d 111 (1988) (overruled on other grounds by, [Aken v. Nebraska Methodist Hosp.](#), 245 Neb. 161, 511 N.W.2d 762 (1994)); [Robertson v. Fowler](#), 197 W. Va. 116, 475 S.E.2d 116 (1996).

² [Hudson Buick, Pontiac, GMC Truck Co. v. Gooch](#), 7 S.W.3d 191 (Tex. App. Tyler 1999).

³ [In re Stinson](#), 443 B.R. 438 (B.A.P. 9th Cir. 2010) (holding that Transferee could perfect ownership interest in truck without complying with statutory registration requirements) (applying California law).

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7A Am. Jur. 2d Automobiles § 51

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II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

3. Noncompliance with Statute as to Sales, Transfers, or Encumbrances

§ 51. Effect as between parties to transfer or their privies

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19, 20

In many jurisdictions, the failure to comply with statutory requirements with respect to the sale or transfer of a motor vehicle has been held, under the particular statutes, not to render the sale or transfer void so as to affect title to or possession of the vehicle as between the parties thereto.¹ Noncompliance does not affect a sale as between the parties, at least when the purposes of the statute are not defeated.²

In other jurisdictions, legal title to an automobile cannot be considered transferred until the parties have strictly complied with the statutory directions for transferring title to motor vehicles.³ In this connection, a sale contrary to such statute is fraudulent and void.⁴ However, extrinsic evidence is admissible to prove ownership of a vehicle, if the parties to an alleged transfer fail to comply with statutory transfer requirements.⁵ Noncompliance with the statute does not override a clear showing of a valid and complete transfer of ownership of an automobile.⁶

When a car sale becomes void through the operation of a statute requiring delivery of the vehicle title within a specified time after the vehicle's delivery, then title remains with the seller.⁷

A vehicle title transfer law is chiefly intended to protect innocent purchasers; when no innocent purchaser is involved, failure to comply with the statute does not void the transfer.⁸

Footnotes

- 1 Aetna Cas. & Sur. Co. v. A.L.J.A., Inc., 905 F. Supp. 36, 30 U.C.C. Rep. Serv. 2d 167 (D. Mass. 1995) (applying Massachusetts law); *In re Davis*, 165 B.R. 327 (Bankr. N.D. Ga. 1994) (applying Georgia law); *Brasher's Cascade Auto Auction v. Valley Auto Sales and Leasing*, 119 Cal. App. 4th 1038, 15 Cal. Rptr. 3d 70, 53 U.C.C. Rep. Serv. 2d 990 (5th Dist. 2004); *Biggs v. Prewitt*, 669 So. 2d 441 (La. Ct. App. 1st Cir. 1995), writ denied, 674 So. 2d 264 (La. 1996); *Thorn v. Adams*, 125 Or. App. 257, 865 P.2d 417, 22 U.C.C. Rep. Serv. 2d 490 (1993); *Tyler Car & Truck Center v. Empire Fire & Marine Ins. Co.*, 2 S.W.3d 482 (Tex. App. Tyler 1999).
- 2 *Gourrier v. Joe Myers Motors, Inc.*, 115 S.W.3d 570 (Tex. App. Houston 14th Dist. 2002).
- 3 *Shivers v. Carr*, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007); *Progressive Group v. Hurtado*, 393 N.J. Super. 517, 924 A.2d 607 (App. Div. 2007) (providing an odometer reading).
- 4 *Reddish v. Heartland Auto Plaza*, 197 S.W.3d 634 (Mo. Ct. App. S.D. 2006).
- 5 *American Nat. General Ins. Co. v. Solum*, 631 N.W.2d 420 (Minn. Ct. App. 2001), aff'd, 641 N.W.2d 891 (Minn. 2002).
- 6 *Hudson Buick, Pontiac, GMC Truck Co. v. Gooch*, 7 S.W.3d 191 (Tex. App. Tyler 1999).
- 7 *Werdann v. Mel Hambleton Ford, Inc.*, 32 Kan. App. 2d 118, 79 P.3d 1081 (2003).
- 8 *Hunter v. USA Agencies Ins. Co.*, 130 So. 3d 1008 (La. Ct. App. 2d Cir. 2014).

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II. Title and Ownership; Transfers and Encumbrances

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3. Noncompliance with Statute as to Sales, Transfers, or Encumbrances

§ 52. Effect as between parties to transfer or their privies—Rights as to purchase price or security

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  19

A.L.R. Library

[Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with laws concerning transfer of title, 58 A.L.R.2d 1351](#)

In a number of jurisdictions, a seller of a motor vehicle who, at the time he or she sues for the purchase price or to enforce a chattel mortgage or conditional sales contract, has not complied in a substantial respect with a statute requiring him or her to furnish a valid certificate of title or bill of sale, is not entitled to relief.¹ However, it is sometimes held that where the statute does not make the sale void and does not prevent title from passing merely because the seller fails to comply with the statute on transfers of title to a motor vehicle, the seller's failure will not prevent him or her from suing for the purchase price or enforcing a mortgage on the vehicle where the buyer has not rescinded and the consideration has not failed.² Compliance with the statute comes too late where the buyer rescinds or loses possession of the vehicle and brings suit for a refund of the purchase price before the certificate of title is tendered to him or her.³

The view has been expressed by at least one court that a person who has purchased a note and chattel mortgage or conditional sales contract from the seller of a motor vehicle is a holder of the note in due course without notice of a violation of the law concerning transfer of title; he or she may enforce the note and mortgage or contract against the buyer even though the seller could not do so.⁴ There is also judicial support for the view that if the endorsee or assignee is not a holder in due course, as where he or she had notice of the failure to comply with the title law before he or she acquired the note and lien, and especially where he or she participated in the violation of the law, he or she is bound by the same equities that exist between the seller and the buyer.⁵

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Footnotes

- 1 Pacific Finance Corp. v. Gherna, 36 Ariz. 509, 287 P. 304 (1930); General Motors Acceptance Corp. v. Daigle, 225 La. 123, 72 So. 2d 319 (1954); A. Cresci & Son v. Steiker, 7 N.J. Super. 76, 72 A.2d 222 (App. Div. 1950).
- 2 Equitable Credit Co. v. Cooper, 146 Miss. 868, 111 So. 749 (1927); Parrott v. Gulick, 1930 OK 438, 145 Okla. 129, 292 P. 48 (1930).
- 3 Neosho Motor Corp. v. Patterson, 1939 OK 165, 184 Okla. 540, 88 P.2d 632 (1939).
As to rescission, see § 53.
- 4 Smith v. G. F. C. Corp., 255 S.W.2d 69 (Mo. Ct. App. 1953).
- 5 General Motors Acceptance Corp. v. Daigle, 225 La. 123, 72 So. 2d 319 (1954).

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§ 53. Effect as between parties to transfer or their privies—Buyer's right to rescind sale

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  19

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[Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with laws concerning transfer of title, 58 A.L.R.2d 1351](#)

Where the seller has failed to comply with a statute concerning transfer of title which declares that a sale shall be void or that no title shall pass unless and until the statute is complied with, or which is construed to have that legal effect, the buyer may repudiate the sale and recover the amount he or she has paid for the vehicle.¹ This is so even though the statute makes it illegal to "buy" as well as to sell a vehicle without a transfer of the certificate of title and declares that such a sale is fraudulent and void.²

Repudiation is premised upon the legal fiction that an executory contract existed between the parties until the certificate of title was delivered.³ Where the failure of the seller to comply with the law prevents the buyer from operating the vehicle on the highway, there is a failure of consideration⁴ which entitles the buyer to rescind and to recover the purchase price.⁵

A contract for the sale of a motor vehicle registered under state law without assignment and delivery of the certificate of title is unlawful and may be repudiated while the transaction remains executory in that the title documents have not been delivered.⁶

Caution:

In order to exercise the remedy of repudiation, the purchaser is required to return the automobile in as good a condition as it was when it was received.⁷

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Footnotes

- 1 Tilson v. Newell, 179 Kan. 73, 293 P.2d 227 (1956); Bayer v. Jackson City Bank & Trust Co., 335 Mich. 99, 55 N.W.2d 746 (1952); Shivers v. Carr, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007).
- 2 Schroeder v. Zykan, 255 S.W.2d 105 (Mo. Ct. App. 1953).
- 3 Shivers v. Carr, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007).
- 4 Harlow v. Dick, 245 S.W.2d 616 (Ky. 1952); Bryant v. Hancock, 287 S.W.2d 525, 58 A.L.R.2d 1348 (Tex. Civ. App. Waco 1956).
- 5 Clay v. Harris, 228 Ill. App. 3d 475, 170 Ill. Dec. 474, 592 N.E.2d 1154 (4th Dist. 1992); Fidelity and Deposit Co. of Maryland v. Greenlee, 62 Or. App. 40, 660 P.2d 172 (1983).
- 6 Bolt v. Giordano, 310 S.W.3d 237 (Mo. Ct. App. E.D. 2010).
- 7 Shivers v. Carr, 219 S.W.3d 301 (Mo. Ct. App. S.D. 2007).

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§ 54. Effect as between party, or his or her privies, and third person

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19

In a number of jurisdictions it has been held that noncompliance with statutory requirements in regard to the sale or transfer of a motor vehicle does not, under the terms of the particular statutes, preclude the purchaser or transferee from asserting title as against a third person, such as one who placed the vehicle with a dealer for purposes of sale,¹ or a judgment creditor of the seller or transferor,² or one who converted the vehicle to his or her own use.³ Moreover, the purchaser or transferee may legally contract with another for the sale of such vehicle.⁴

In other jurisdictions, it has been held that noncompliance with statutory requirements as to the sale or transfer of a motor vehicle precludes the purchaser or transferee from asserting title as against a third person,⁵ in particular, it has been stated that a seller of a motor vehicle who fails to comply with statutory requirements in regard to such sale may not be allowed to invoke the statute where, if allowed, an innocent purchaser will suffer from fraud and deceit practiced upon him or her by the seller.⁶

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Footnotes

¹ [Kenny v. Christianson](#), 200 Cal. 419, 253 P. 715, 50 A.L.R. 1297 (1927).

² [Cerex Co. v. Peterson](#), 203 Iowa 355, 212 N.W. 890 (1927); [Commercial Credit Co. v. Schreyer](#), 120 Ohio St. 568, 7 Ohio L. Abs. 333, 166 N.E. 808, 63 A.L.R. 674 (1929); [Junkin v. Anderson](#), 12 Wash. 2d 58, 120 P.2d 548 (1941), opinion supplemented on reh'g, 12 Wash. 2d 58, 123 P.2d 759 (1942).

³ [Rankin v. Wyatt](#), 335 Mo. 628, 73 S.W.2d 764, 94 A.L.R. 941 (1934).

- 4 Sargent v. Pendleton Auto Co., 121 Or. 677, 257 P. 2d (1927).
- 5 U.S. v. 1977 Porsche Carrera 911 VIN 9117201924, License No. 459 DWR, 946 F.2d 30 (5th Cir. 1991) (applying Texas law); Matter of Stewart, 9 B.R. 32 (Bankr. M.D. Ga. 1980) (applying Georgia law); Martin v. Nager, 192 N.J. Super. 189, 469 A.2d 519, 38 U.C.C. Rep. Serv. 781 (Ch. Div. 1983); Morey v. Page, 802 S.W.2d 779 (Tex. App. Dallas 1990).
Failure to file registration procedures rendered sale of truck void as to creditor of seller seeking to enforce judgment where buyer did not take possession of the truck. Kovacich v. Norgaard, 221 Mont. 26, 716 P.2d 633 (1986).
- 6 Commercial Credit Co. v. McNelly, 36 Del. 88, 171 A. 446 (Super. Ct. 1934).

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§ 55. Effect as between party, or his or her privies, and third person—For purposes of tort liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19

When the question of ownership arises in a tort case, in some jurisdictions, a seller's failure to comply with the title or registration requirements may result in the seller being deemed the owner and liable for the tortious injuries caused by the buyer.¹ However, where the buyer has the responsibility to obtain registration, his or her failure to do so will not invalidate the sale so as to render the seller liable in tort.² Other jurisdictions will allow the evidence in the certificate of title to be rebutted when determining the owner for purposes of tort liability.³

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¹ [Durbin v. Fletcher](#), 165 Cal. App. 3d 334, 211 Cal. Rptr. 483 (5th Dist. 1985); [Rogers v. Wheeler](#), 864 S.W.2d 892 (Ky. 1993); [Oliver v. Cameron Mut. Ins. Co.](#), 866 S.W.2d 865 (Mo. Ct. App. E.D. 1993). For purposes of tort law and liability insurance coverage, no ownership passes to the purchaser of a motor vehicle which requires registration under statutory requirements until: (1) the owner executes, in the presence of a person authorized to administer oaths, an assignment and warranty of title on the reverse of the certificate of title, including the name and address of the transferee, (2) there is an actual or constructive delivery of the motor vehicle, and (3) the duly assigned certificate of title is delivered to the transferee. [Singletary, III v. P & A Investments, Inc.](#), 212 N.C. App. 469, 712 S.E.2d 681, 74 U.C.C. Rep. Serv. 2d 830 (2011).

² [Barr v. Gaines](#), 103 Nev. 548, 746 P.2d 634 (1987).

The seller of a pick-up truck properly transferred title, and thus relinquished ownership of a truck at the time of the sale to the buyer, for purposes of determining tort liability with respect to the buyer's subsequent accident, although the buyer failed to title the truck, where the seller endorsed the assignment and warranty of title on the certificate of title and delivered it to the buyer, and the buyer paid full purchase price and took possession of the truck free of any liens or encumbrances. [Allen v. Jones, 372 S.W.3d 441 \(Ky. Ct. App. 2012\) \(applying Tennessee law\).](#)

3

[Bank North v. Soule, 420 N.W.2d 598 \(Minn. 1988\).](#)

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II. Title and Ownership; Transfers and Encumbrances

B. Sale, Transfer, and Encumbrances

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§ 56. Effect as between party, or his or her privies, and third person—Failure to note liens upon certificate of title

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 19

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[Rights of seller of motor vehicle with respect to purchase price or security on failure to comply with laws concerning transfer of title, 58 A.L.R.2d 1351](#)

[Priority as between artisan's lien and chattel mortgage, 36 A.L.R.2d 229](#)

Forms

Forms regarding title of automobile, generally, see Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic
[Westlaw®(r) Search Query]

Statutory provision is sometimes made for the notation upon the certificate of title to a motor vehicle of encumbrances to which the vehicle is subject.¹ The failure to comply with such provision generally renders the liens unenforceable as against third persons without actual knowledge thereof.² Thus, where the lien of a chattel mortgagee on a motor vehicle is not noted on the certificate of title as required by statute, a repair person performing work on the vehicle at the instance of the mortgagor is entitled to priority over the lien of the chattel mortgagee.³

In some jurisdictions, the recordation of the lien, without the notation, at the same time, of its existence on the certificate of title, is deemed not to convey notice to a third person,⁴ and the lien is not enforceable against a purchaser or encumbrancer without notice thereof.⁵

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Footnotes

- 1 § 37.
- 2 First Nat. Bank of Arizona v. Carbajal, 132 Ariz. 263, 645 P.2d 778, 33 U.C.C. Rep. Serv. 1523 (1982); General Motors Acceptance Corp. v. Hodge, 485 S.W.2d 894 (Ky. 1972); Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867, 41 U.C.C. Rep. Serv. 1453 (1985).
Seller of trucks failed to perfect security interest in trucks as against bank's subsequently acquired security interest in "all debtor's equipment," notwithstanding that seller's failure to properly register lien with motor vehicle department was due to buyer's fraudulent removal from title applications of seller's notices of security interest perfection. Milwaukee Mack Sales, Inc. v. First Wisconsin Nat. Bank of Milwaukee, 93 Wis. 2d 589, 287 N.W.2d 708, 28 U.C.C. Rep. Serv. 540 (1980).
- 3 San Jacinto Finance Corp. v. Kelley, 239 S.W.2d 820 (Tex. Civ. App. Galveston 1951), writ refused n.r.e.
- 4 Motor Inv. Co. v. Knox City, 141 Tex. 530, 174 S.W.2d 482 (1943).
- 5 Burtrum Bros. Motor Co. v. Dryden, 38 So. 2d 88 (La. Ct. App. 1st Cir. 1948), opinion amended on other grounds on reh'g, 40 So. 2d 525 (La. Ct. App. 1st Cir. 1949).

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III. Licensing, Taxation, and Registration

A. Vehicles

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A.L.R. Index, Certificates of Title

West's A.L.R. Digest, [Automobiles](#) 21 to 57, 65 to 87, 96 to 108

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III. Licensing, Taxation, and Registration

A. Vehicles

1. In General

§ 57. Registration requirements, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  21, 65

The purpose of vehicle registration requirements is identification and revenue.¹

Statutes in many states provide that it is illegal for any person to operate a motor vehicle on state's roads or highways unless the vehicle is registered.² These statutes also provide for certain penalties for failure to register, such as police impoundment of vehicles that are improperly registered.³ Violation of motor vehicle registration statutes may also have other consequences. For example, where a statute requires a vehicle seller to forward applications for registration of certificates of title to the county treasurer within a certain time after the vehicle is sold, failure to forward those documents constitutes negligence per se.⁴

In some jurisdictions, statutes have been enacted that make the payment of property taxes on motor vehicles a condition precedent to the licensing or registration of such vehicles.⁵

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Footnotes

¹ [In re Durette](#), 228 B.R. 70, 37 U.C.C. Rep. Serv. 2d 1142 (Bankr. D. Conn. 1998).

² [Satterlee v. State](#), 289 Ark. 450, 711 S.W.2d 827 (1986); [Redden v. State](#), 1987 OK CR 142, 739 P.2d 536 (Okla. Crim. App. 1987); [State v. Griffin](#), 183 Wis. 2d 327, 515 N.W.2d 535 (Ct. App. 1994).

³ [U.S. v. Rios](#), 88 F.3d 867 (10th Cir. 1996); [People v. Brown](#), 2016 COA 150, 2016 WL 6122812 (Colo. App. 2016).

- 4 Tim O'Neill Chevrolet, Inc. v. Forristall, 551 N.W.2d 611 (Iowa 1996).
5 State v. Mirabal, 1928-NMSC-056, 33 N.M. 553, 273 P. 928, 62 A.L.R. 296 (1928).

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III. Licensing, Taxation, and Registration

A. Vehicles

1. In General

§ 58. Registration certificates and license plates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 39 to 41, 86

The statutes providing for the licensing of motor vehicles generally require the owners to procure a registration certificate and license plates, and to display the plates on the vehicle. Such a requirement does not violate the constitutional prohibitions against unreasonable searches, self-incrimination, or deprivation of property without due process of law,¹ and are constitutional exercises of the police power.² In fact, a stop of one's vehicle is justified by a police officer's observation of an expired license plate on the vehicle, which violates state law.³

In the design and issuance of license plates, a state may not require an individual to participate in the dissemination of an ideological message by requiring the display of a license plate containing such a message for the express purpose that it be observed and read by the public.⁴

Observation:

Vehicle dealers are regulated apart from ordinary vehicle owners, and under some such regulations, they are permitted to demonstrate their vehicles held for sale under dealers' license numbers.⁵

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Footnotes

- 1 [People v. Schneider](#), 139 Mich. 673, 103 N.W. 172 (1905).
- 2 [City of Billings v. Skurdal](#), 224 Mont. 84, 730 P.2d 371 (1986); [State v. Garvin](#), 945 A.2d 821 (R.I. 2008).
- 3 [U.S. v. Aguilar](#), 301 F. Supp. 2d 1263 (D.N.M. 2004).
- 4 [Wooley v. Maynard](#), 430 U.S. 705, 97 S. Ct. 1428, 51 L. Ed. 2d 752 (1977) (a state could not enforce criminal sanctions for obscuring the state motto “Live Free or Die,” since the state’s requirement that noncommercial vehicle license plates be embossed with such a motto invaded First Amendment rights).
As to citizens’ rights to express themselves through vanity plates, see [§ 59](#).
- 5 [§ 166](#).

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III. Licensing, Taxation, and Registration

A. Vehicles

1. In General

§ 59. Registration certificates and license plates—Vanity and special plates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 39 to 41, 86

A.L.R. Library

[Validity, Construction, and Operation of State Statutes Regulating Issuance of Special or Vanity License Plates](#), 8 A.L.R.6th 639

Generally, cases addressing a state's right to regulate customized license plates are decided based on whether a viewpoint is being expressed through the plate and, if so, whether a restriction on the plate is viewpoint neutral.¹ The question of a state's right to regulate customized license plates also turns on whether the plate is considered a public or nonpublic forum; restrictions on speech within nonpublic forum must not discriminate on basis of viewpoint, and must be reasonable in light of forum's purpose.²

Observation:

In some jurisdictions, constitutional challenges to license plates bearing the words "Choose Life" have been permitted,³ while in others, such challenges have failed due to lack of standing.⁴ In another jurisdiction, an action by motorists and an abortion-rights

organization seeking to enjoin, on First Amendment grounds, the state's statutory scheme for specialty license plates containing the words "Choose Life" and "Adoption Creates Families" but no abortion-rights counterpart, was not mooted by a legislative amendment that expanded the scheme by permitting applications for other specialty plates for any cause, as the amendment's requirement of 500 prepaid applications for the issuance of nonlisted plates was a discriminatory burden on abortion-rights supporters.⁵

Proper standing to bring a constitutional challenge regarding the issuance or revocation of a special license plate is attained when it is shown that the alleged injury is concrete, specific, and not hypothetical.⁶

Some courts have found that it is appropriate to revoke a license plate based on public complaints received, reasoning that such complaints are a good indication of what the public finds offensive,⁷ while other courts have held that the fact that a complaint has been received does not necessarily mean that the general public is offended.⁸

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Footnotes

- 1 [Perry v. McDonald](#), 280 F.3d 159 (2d Cir. 2001) (viewpoint neutral); [Planned Parenthood Of South Carolina Inc. v. Rose](#), 361 F.3d 786 (4th Cir. 2004) (not viewpoint neutral); [Sons of Confederate Veterans, Inc. ex rel. Griffin v. Commissioner of Virginia Dept. of Motor Vehicles](#), 288 F.3d 610, 8 A.L.R.6th 797 (4th Cir. 2002) (not viewpoint neutral); [Choose Life Illinois, Inc. v. White](#), 547 F.3d 853 (7th Cir. 2008); [Byrne v. Terrill](#), 2005 WL 2043011 (D. Vt. 2005) (viewpoint neutral); [Kahn v. Department of Motor Vehicles](#), 16 Cal. App. 4th 159, 20 Cal. Rptr. 2d 6 (2d Dist. 1993) (viewpoint neutral).
- 2 [Walker v. Texas Div., Sons of Confederate Veterans, Inc.](#), 135 S. Ct. 2239, 192 L. Ed. 2d 274 (2015) (Texas's specialty license plates were not nonpublic forum to which First Amendment speech protections applied; with respect to specialty license plate designs, Texas was not simply managing government property, but instead was engaging in expressive conduct, notwithstanding that it charged vehicle owners annual fees to display specialty plates); [Choose Life Illinois, Inc. v. White](#), 547 F.3d 853 (7th Cir. 2008).
- 3 [Planned Parenthood Of South Carolina Inc. v. Rose](#), 361 F.3d 786 (4th Cir. 2004) (enhanced standing is afforded to plaintiffs making facial First Amendment challenges to licensing or underinclusive statutes, and because the legislature selected one viewpoint over all others, the plaintiffs did not first have to apply for a license plate bearing a slogan of their own choice); [American Civil Liberties Union of Tennessee v. Bredesen](#), 354 F. Supp. 2d 770 (M.D. Tenn. 2004), judgment rev'd on other grounds, 441 F.3d 370, 2006 FED App. 0099P (6th Cir. 2006) (rejected on other grounds by, [Children First Foundation, Inc. v. Martinez](#), 631 F. Supp. 2d 159 (N.D. N.Y. 2007)).
- 4 [Choose Life Illinois, Inc. v. White](#), 547 F.3d 853 (7th Cir. 2008) (Illinois's exclusion from its specialty license plate program of entire subject of abortion was content-based, but viewpoint-neutral restriction on access to nonpublic forum of specialty license plates, and was reasonable given perception that specialty plates were approved by state; the state's denial of advocacy group's application for "Choose Life" plate did not infringe First Amendment's free speech guarantee); [Women's Emergency Network v. Bush](#), 323 F.3d 937 (11th Cir. 2003) (until the appellants applied for a specialty license plate and were rejected, there was no injury in fact and, therefore, no standing).
- 5 [Hill v. Kemp](#), 478 F.3d 1236 (10th Cir. 2007).
- 6 [Matwyuk v. Johnson](#), 22 F. Supp. 3d 812 (W.D. Mich. 2014) (vehicle owner's allegations that he was denied personalized license plate stating "WAR SUX" pursuant to Michigan's program that prohibited plates "that might carry a connotation offensive to good taste and decency" were sufficient to state claims that program

was vague and overbroad in violation of his First Amendment speech rights, as required for his claims for declaratory and injunctive relief); *Barnard v. Motor Vehicle Div. of Utah State Tax Com'n*, 905 P.2d 317 (Utah Ct. App. 1995) (citizen seeking the revocation of license plates containing combination of letters reading "redskin," "redskn" and "rdskin" did not have standing as the petitioner had no personal stake in the outcome of the matter).

7 *Perry v. McDonald*, 280 F.3d 159 (2d Cir. 2001); *McMahon v. Iowa Dept. of Transp., Motor Vehicle Div.*, 522 N.W.2d 51 (Iowa 1994); *Mitchell v. Maryland Motor Vehicle Administration*, 450 Md. 282, 148 A.3d 319 (2016), as corrected on reconsideration, (Dec. 6, 2016).

8 *Sons of Confederate Veterans, Inc. v. Glendening*, 954 F. Supp. 1099 (D. Md. 1997).

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7A Am. Jur. 2d Automobiles § 60

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

a. Power of State, in General

§ 60. Power of state to license or tax, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  22 to 27, 66 to 72

Motor vehicle registration is a traditional government function.¹

Because the operation of a motor vehicle is a privilege,² the legislature of each state may, in the exercise of the police power, enact reasonable regulations requiring the licensing or registration of motor vehicles,³ including the private motor carriers of property,⁴ and public or common⁵ carriers of persons or property. Under some state constitutions, the imposition of licensing or registration fees under the police power will be upheld by the courts when plainly intended as police power regulation, so long as the revenue derived is not disproportionate to the cost of issuing the license and regulating the business to which it applies.⁶

The state may also impose such a fee or tax for revenue purposes,⁷ such as constructing and maintaining the public highways.⁸ A fee or tax imposed for revenue purposes is not limited to the cost of administering the law.⁹

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Footnotes

1

[Prairie Band Potawatomi Nation v. Wagnon](#), 476 F.3d 818 (10th Cir. 2007) (applying Kansas law).

- 2 Grimes v. Alfa Mutual Insurance Company, 2017 WL 382294 (Ala. 2017); Burke v. Board of Appeal on
Motor Vehicle Liability Policies and Bonds, 90 Mass. App. Ct. 203, 58 N.E.3d 351 (2016), review denied,
476 Mass. 1101, 63 N.E.3d 386 (2016).
- 3 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); State v. Gish, 168 Iowa 70, 150 N.W. 37 (1914); State v.
Folda, 267 Mont. 523, 885 P.2d 426 (1994); People v. McClean, 167 Misc. 40, 3 N.Y.S.2d 314 (N.Y. City
Ct. 1938); State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997).
- 4 Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
- 5 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Iowa
Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280
U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914); Camas
Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922); Memphis St. Ry. Co. v. Rapid Transit Co.,
133 Tenn. 99, 179 S.W. 635 (1915).
- 6 Merrelli v. City of St. Clair Shores, 355 Mich. 575, 96 N.W.2d 144 (1959).
- 7 Mark v. District of Columbia, 37 App. D.C. 563, 37 L.R.A.N.S. 440, 1911 WL 20154 (App. D.C. 1911); Ex
parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); City of
Chicago v. Morell, 247 Ill. 383, 93 N.E. 295 (1910).
- 8 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); State
ex rel. Metropolitan Thoroughfare Authority of Marion County v. Nutting, 246 Ind. 105, 203 N.E.2d 192
(1964); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928),
aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914).
- 9 Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61
L. Ed. 222 (1916).

As to the nature of a licensing or registration fee or tax, generally, see §§ 71 to 80.

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7A Am. Jur. 2d Automobiles § 61

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

a. Power of State, in General

§ 61. Vehicles owned by nonresidents

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  28, 36, 67, 78

It is well-settled that the police power of a state to regulate the use of motor vehicles on its highways extends to nonresidents as well as residents,¹ and that a state may prohibit the use of its highways by a foreign motor vehicle unless and until it is licensed in accordance with state laws.² While states may allow nonresidents to use vehicles in-state for limited periods of time without complying with their licensing or registration laws, as a pure matter of state power, a state can stop a nonresident motorist at its boundaries and require him or her, as a condition of operating the motor vehicle on the highways of the state, to pay a reasonable license fee.³ Such a requirement may, under proper circumstances, be extended to one engaged in interstate commerce.⁴

Under a state statute providing that a vehicle based in-state or primarily using in-state highways must be registered in-state, a vehicle owned by a resident but based out-of-state, and used primarily out-of-state, is not subject to the registration requirement.⁵

Observation:

A state's acceptance of an interstate registration reciprocity agreement with respect to motor vehicles constitutes a waiver of the right to impose registration fees in the form of retaliatory taxes on foreign-registered vehicles.⁶

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Footnotes

- 1 § 19.
- 2 *C. I. T. Corp. v. W. J. Crosby & Co.*, 175 Va. 16, 7 S.E.2d 107 (1940).
- 3 *Harper v. England*, 124 Fla. 296, 168 So. 403 (1936); *State ex rel. Cronkhite v. Belden*, 193 Wis. 145, 214 N.W. 460, 57 A.L.R. 1218 (1927).
- 4 § 62.
- 5 *Jones v. Pierce*, 199 Cal. App. 3d 736, 245 Cal. Rptr. 149 (6th Dist. 1988).
- 6 *Private Truck Council of America, Inc. v. State*, 128 N.H. 466, 517 A.2d 1150 (1986).

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7A Am. Jur. 2d Automobiles § 62

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

b. Federal Limits on State Power

§ 62. Limits imposed by United States Constitution

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  23, 28, 67 to 69, 73

A.L.R. Library

[State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421](#)

A statute imposing a tax on interstate motor carriers that is fairly apportioned, not discriminatory, and uses a reasonable exercise of legislative judgment, is constitutional under the Privileges and Immunities, Commerce, and Equal Protection Clauses of the United States Constitution.¹ However, a statute providing for a fee or tax on commercial vehicles is invalid under the Commerce Clause where it discriminates against out-of-state vehicles by subjecting them to a much higher charge per mile than in-state vehicles, where it does not purport to fairly approximate the cost or value of the use of the state's roads, where the amount owed does not vary directly with the number of miles traveled or with any other proxy for value obtained from the state, and where highway use taxes could be imposed by other states.²

Practice Tip:

When a motor carrier challenges a state's formula for apportioning franchise taxes under the Commerce Clause of the Federal Constitution, the burden of proof is not on the state to show that the formula is fair, but rather is upon the taxpayer to show that the formula attributes a disproportionate income to the state or leads to a grossly distorted result.³

Under the Due Process Clause of the United States Constitution, proof of the habitual presence of a nonresident's vehicles in the state permits taxation by the state based on the average number of vehicles continuously present in the state.⁴

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Footnotes

- 1 [Morf v. Bingaman](#), 298 U.S. 407, 56 S. Ct. 756, 80 L. Ed. 1245 (1936); [Bingaman v. Golden Eagle Western Lines](#), 297 U.S. 626, 56 S. Ct. 624, 80 L. Ed. 928 (1936); [Hicklin v. Coney](#), 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); [American Trucking Ass'n, Inc. v. Com., Transp. Cabinet](#), 676 S.W.2d 785 (Ky. 1984); [State v. Garford Trucking](#), 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950); [People v. Learnard](#), 305 N.Y. 495, 114 N.E.2d 9 (1953); [Shirks Motor Exp. Corp. v. Messner](#), 375 Pa. 450, 100 A.2d 913 (1953); [Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue](#), 164 Wis. 2d 764, 477 N.W.2d 44 (1991).
[American Trucking Associations, Inc. v. Scheiner](#), 483 U.S. 266, 107 S. Ct. 2829, 97 L. Ed. 2d 226 (1987); [American Trucking Associations, Inc. v. Secretary of Admin.](#), 415 Mass. 337, 613 N.E.2d 95 (1993).
- 2 An individual may properly bring a claim under [42 U.S.C.A. § 1983](#) that the Commerce Clause is violated by certain allegedly retaliatory taxes and fees imposed by a state on motor carriers. [Dennis v. Higgins](#), 498 U.S. 439, 111 S. Ct. 865, 112 L. Ed. 2d 969 (1991).
- 3 [Consolidated Freightways Corp. of Delaware v. Wisconsin Dept. of Revenue](#), 164 Wis. 2d 764, 477 N.W.2d 44 (1991).
- 4 [State v. Richard L. Hodges, Inc.](#), 420 A.2d 247 (Me. 1980).

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7A Am. Jur. 2d Automobiles § 63

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

b. Federal Limits on State Power

§ 63. Limits imposed by United States Constitution—Imposition of different fees or taxes on vehicles purchased out-of-state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  28, 73

A.L.R. Library

[Sales or use tax on motor vehicle purchased out of state, 45 A.L.R.3d 1270](#)

A fee imposed on vehicles purchased out-of-state and then titled in-state, which may result in purchasers paying more tax on vehicles purchased out-of-state, is invalid as a violation of the Commerce Clause where it does not advance a legitimate local purpose that could not be adequately served by reasonable nondiscriminatory means.¹ Likewise, a vehicle registration fee which imposes a higher per mile flat tax rate for out-of-state carriers than for in-state carriers had a discriminatory effect on interstate commerce in violation of the Commerce Clause.² A state's use of a different method for determining the market value of vehicles purchased out-of-state to determine license fees and use taxes discriminates between interstate and local commerce, and therefore also violates the Commerce Clause.³ A state motor vehicle use tax statute violates the Equal Protection Clause of the 14th Amendment to the Federal Constitution when it grants a credit for sales tax paid to a reciprocating state on cars purchased by present residents of the state, even though the cars had been previously registered and used in the reciprocating

state, but denies credit for sales tax paid by those who purchased and registered their cars outside of the state before becoming residents of the state.⁴

Even assuming such statutes are valid, a tax on vehicles purchased out-of-state may not be applied to a vehicle that is used only occasionally in-state, as the connection with the state is too tenuous.⁵

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Footnotes

- 1 [Department of Revenue v. Kuhnlein](#), 646 So. 2d 717 (Fla. 1994), as clarified, (Nov. 30, 1994).
- 2 [Owner Operator Independent Drivers Ass'n v. New York State Dept. of Taxation and Finance](#), 52 Misc. 3d 855, 34 N.Y.S.3d 332 (Sup 2016).
- 3 [Woosley v. State of California](#), 3 Cal. 4th 758, 13 Cal. Rptr. 2d 30, 838 P.2d 758 (1992), as modified on other grounds on denial of reh'g, (Dec. 31, 1992).
- 4 [Williams v. Vermont](#), 472 U.S. 14, 105 S. Ct. 2465, 86 L. Ed. 2d 11 (1985).
- 5 [McMahon v. Limbach](#), 65 Ohio St. 3d 310, 603 N.E.2d 996 (1992).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

b. Federal Limits on State Power

§ 64. Sovereignty of and treaties with Indian tribes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  23, 28, 68, 72, 74

A state's vehicle taxation laws may be preempted by the sovereignty of Indian tribes.¹ This preemption may occur even if the tribal members in question do not live on a formal reservation.² A state that recognizes the vehicle registrations of all other states, foreign countries, and out-of-state Indian tribes cannot refuse to grant recognition to motor vehicle registrations issued by a Native American tribe within the state, based on alleged safety concerns, as that amounts to impermissible discrimination.³ A state's motor vehicle and mobile home, camper, and trailer taxes, which impose an excise tax for the privilege of using a covered vehicle in the state, cannot be imposed on vehicles owned by tribes or their members and used both on and off reservations.⁴

Observation:

Whether a treaty exempts a tribe from state highway user fees depends on the intent of the parties when they signed the treaty.⁵

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Footnotes

- 1 [Oklahoma Tax Com'n v. Sac and Fox Nation](#), 508 U.S. 114, 113 S. Ct. 1985, 124 L. Ed. 2d 30 (1993).
- 2 [Oklahoma Tax Com'n v. Sac and Fox Nation](#), 508 U.S. 114, 113 S. Ct. 1985, 124 L. Ed. 2d 30 (1993) (it is enough that the member live in “Indian country,” which is statutorily defined to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States (citing [18 U.S.C.A. § 1151](#))).
- 3 [Prairie Band Potawatomi Nation v. Wagnon](#), 476 F.3d 818 (10th Cir. 2007) (applying Kansas law).
- 4 [Washington v. Confederated Tribes of Colville Indian Reservation](#), 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).
- 5 [Cree v. Waterbury](#), 78 F.3d 1400 (9th Cir. 1996).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

b. Federal Limits on State Power

§ 65. Preemption by federal legislation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  23 to 27, 67 to 72

A state statute imposing an annual registration fee on trucks registered in the state which operate entirely in interstate commerce is not preempted by a federal statute requiring that interstate motor carriers obtain a federal permit, and providing that the imposition of any additional state registration requirement is a burden on interstate commerce, where the state statute makes no reference to the federal permit, no state rules related to the state fee require the filing of information about a federal permit, state law imposed a separate fee on interstate trucks with state plates before the federal permit statute existed, state law provides that an interstate truck with state plates can comply with federal requirements without complying with the state fee requirement, and although the state gives a discount in the amount of the federal fee for trucks that pay the state fee, such a connection does not transform the fee into a requirement concerning the federal statute.¹

Federal legislation addresses commercial motor vehicle safety,² commercial motor vehicle operators,³ and motor carrier safety.⁴ In passing federal motor carrier laws, Congress did not intend to occupy completely the field of safety regulations for the operation on interstate highways of commercial vehicles, and indeed contemplated the continued application and enforcement of state rules or regulations which might not be inconsistent or incompatible with federal regulations.⁵ In effect, Congress intended an accommodation with state regulation so long as that could be achieved without violating federal law or valid federal regulation.⁶

Footnotes

- 1 Mid-Con Freight Systems, Inc. v. Michigan Public Service Com'n, 545 U.S. 440, 125 S. Ct. 2427, 162 L. Ed. 2d 418 (2005) (applying federal and Michigan law).
- 2 49 U.S.C.A. §§ 31101 to 31151.
- 3 49 U.S.C.A. §§ 31301 to 31317.
- 4 49 U.S.C.A. §§ 31501 to 31504.
- 5 Specialized Carriers & Rigging Assoc. v. Com. of Va., 795 F.2d 1152 (4th Cir. 1986); Dixon v. Hot Shot Exp., Inc., 44 So. 3d 1082 (Ala. 2010).
Federal motor carrier safety regulations are not intended to preclude states from establishing or enforcing state laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto. *Brown v. Holiday Stationstores, Inc.*, 723 F. Supp. 396 (D. Minn. 1989).
- 6 Specialized Carriers & Rigging Assoc. v. Com. of Va., 795 F.2d 1152 (4th Cir. 1986).

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 66. Power of municipalities or political subdivisions of the state to license or tax vehicles, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  23 to 27, 67 to 72

Where a state statute providing for the licensing or taxation of motor vehicles provides that it is exclusive, a municipal corporation cannot legislate on this subject, and ordinances which fall within the exclusive domain of the state are null and void.¹ On the other hand, in a state with home-rule provisions, a county may properly impose a road maintenance fee on all motor vehicles registered in the county, pursuant to the county's home-rule authority, provided only that the fee is a fair and reasonable alternative to increasing the general county property tax and is imposed upon those for whom the service is primarily provided.²

A statute providing for exclusive licensing by the state does not prevent a municipality from requiring a license in the course of a bona fide regulation of an occupation, even though the nature of the occupation implies the use of the streets by a motor vehicle.³ Unless the state licensing statute provides that it is exclusive, the mere fact that the state licenses motor vehicles does not, in and of itself, exclude the power of a municipality to require an additional license under the police power.⁴ In addition, so-called exclusive licensing statutes frequently reserve to local authorities the power to license vehicles for hire.⁵

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Footnotes

- 1 Phenix City v. Putnam, 268 Ala. 661, 109 So. 2d 836 (1959); Anderson v. Wentworth, 75 Fla. 300, 78 So.
2 265 (1918).
3 Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992).
4 City of Buffalo v. Lewis, 192 N.Y. 193, 84 N.E. 809 (1908).
5 Borough of Applewold v. Dosch, 239 Pa. 479, 86 A. 1070 (1913).
Phenix City v. Putnam, 268 Ala. 661, 109 So. 2d 836 (1959); Anderson v. Wentworth, 75 Fla. 300, 78 So.
265 (1918).

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7A Am. Jur. 2d Automobiles § 67

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 67. Delegation of power by state

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  27, 72, 73

In the absence of constitutional limitations, the legislature of each state may delegate to its municipalities or other political subdivisions the power to impose a fee or tax for the licensing or registration of motor vehicles generally,¹ and of motor vehicles for hire engaged in intrastate² or interstate commerce.³ The fee or tax may be used for revenue purposes generally,⁴ or for the improvement or maintenance of streets or roads.⁵

Where a municipality has been delegated the power to regulate the use of its streets by vehicles, it may require a license for such use and impose a reasonable license fee.⁶ However, a municipality, under a delegated power to provide for the imposition of license fees or taxes upon the owners of motor vehicles, does not have the power to enact an ordinance imposing a fee or tax in excess of the amount that the state statute authorizes.⁷

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Footnotes

¹ *Duval Lumber Co. v. Slade*, 147 Fla. 137, 2 So. 2d 371 (1941); *Larson v. Seattle Popular Monorail Authority*, 156 Wash. 2d 752, 131 P.3d 892 (2006), as amended on other grounds, (May 24, 2006).

An island village which was granted legislative authority to regulate motor vehicles and which had been given the authority to impose fees on certain vehicles according to their weight, did not exceed its authority

by imposing fees based on weight and width. *Bald Head Island, Ltd. v. Village of Bald Head Island*, 175 N.C. App. 543, 624 S.E.2d 406 (2006).

2 S.B. Carts, Inc. v. Put-in-Bay, 161 Ohio App. 3d 691, 2005-Ohio-3065, 831 N.E.2d 1052 (6th Dist. Ottawa County 2005); *Portland Van & Storage Co. v. Hoss*, 139 Or. 434, 9 P.2d 122, 81 A.L.R. 1136 (1932); *Hadfield v. Lundin*, 98 Wash. 657, 168 P. 516 (1917).

3 *Buck v. People of State of Cal.*, 343 U.S. 99, 72 S. Ct. 502, 96 L. Ed. 775 (1952); *Sprout v. City of South Bend, Ind.*, 277 U.S. 163, 48 S. Ct. 502, 72 L. Ed. 833, 62 A.L.R. 45 (1928); *American Bus Ass'n, Inc. v. District of Columbia*, 2 A.3d 203 (D.C. 2010).

4 As to the power of the state itself to tax vehicles engaged in interstate commerce, see § 62.

5 *Harder's Fireproof Storage & Van Co. v. City of Chicago*, 235 Ill. 58, 85 N.E. 245 (1908); *Ex parte Dickey*, 76 W. Va. 576, 85 S.E. 781 (1915).

6 *American Bus Ass'n, Inc. v. District of Columbia*, 2 A.3d 203 (D.C. 2010); *City of Chicago v. Morell*, 247 Ill. 383, 93 N.E. 295 (1910); *City of Des Moines v. Bolton*, 128 Iowa 108, 102 N.W. 1045 (1905).

7 *People's Taxicab Co. v. City of Wichita*, 140 Kan. 129, 34 P.2d 545, 95 A.L.R. 1218 (1934); *Fiscal Court of Owen County v. F. & A. Cox Co.*, 132 Ky. 738, 117 S.W. 296 (1909).

7 *City of Sikeston v. Marsh*, 110 S.W.2d 1135 (Mo. Ct. App. 1937).

7A Am. Jur. 2d Automobiles § 68

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 68. Conflict between state statutes and local regulations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  29, 30, 74, 75

Where state motor vehicle licensing or taxation statutes provide that they are exclusive, local ordinances requiring vehicle registration or taxation are invalid.¹ In addition, even when a municipality or subdivision of the state has been delegated the power to impose license or registration fees or taxes upon the owners of motor vehicles, it has no power to enact an ordinance in such respect that conflicts with valid state statutes.² However, not all ordinances providing for the licensing or taxing of motor vehicles conflict with state statutes regulating the licensing of motor vehicles.³

Some ordinances relating to the licensing of motor vehicles for hire have been upheld, notwithstanding the provisions of statutes regulating such vehicles.⁴ However, where the state statute limits or prohibits the imposition of taxes by local authorities upon operators of motor vehicles for hire, a tax or license fee imposed by an ordinance is invalid.⁵

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Footnotes

1 § 66.

2 *City of Sikeston v. Marsh*, 110 S.W.2d 1135 (Mo. Ct. App. 1937); *C. D. Kenny Co. v. Town of Brevard*, 217 N.C. 269, 7 S.E.2d 542 (1940); *Western Auto Transports v. City of Cheyenne*, 57 Wyo. 351, 120 P.2d 590 (1942).

- 3 State ex rel. Nelson v. Quigg, 143 Fla. 227, 196 So. 417 (1940); Sperling v. Valentine, 176 Misc. 826, 28
N.Y.S.2d 788 (Sup 1941); Continental Baking Co. v. City of Mt. Vernon, 182 Wash. 68, 44 P.2d 821 (1935).
4 Cooper v. Town of Greenwood, 195 Ark. 26, 111 S.W.2d 452 (1937); City of Chicago v. Hastings Express
Co., 369 Ill. 610, 17 N.E.2d 576 (1938); State v. Palmer, 212 Minn. 388, 3 N.W.2d 666 (1942); Covey Drive
Yourself & Garage v. City of Portland, 157 Or. 117, 70 P.2d 566 (1937).
5 Talley v. City of Blytheville, 204 Ark. 745, 164 S.W.2d 900 (1942); Heartt v. Village of Downers Grove,
278 Ill. 92, 115 N.E. 869 (1917).

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7A Am. Jur. 2d Automobiles § 69

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 69. Regulation of nonresident vehicle owners

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  32, 36, 78

A nonresident of a municipality who merely passes through it occasionally with a motor vehicle and uses the streets in isolated instances cannot be made to pay a license fee or tax for operating the vehicle on the municipal streets.¹ Statutes that empower municipalities to license and regulate motor vehicles for hire within their limits are not ordinarily construed to authorize the passage of ordinances attempting to impose a license or tax on vehicles that undertake to transport for hire between points within a municipality and points without, or that merely pass through the streets of a municipality in going to and from points without its limits.²

The power of a municipality to impose license fees or taxes upon motor vehicles owned by nonresidents is particularly precluded by statutes which provide that, where an owner of a motor vehicle has properly registered the vehicle with the state, the owner may not be required by any municipality other than that within which he or she resides to pay any tax or license fee for the use of the vehicle.³

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Footnotes

¹ [City of Georgetown v. Morrison, 362 S.W.2d 289 \(Ky. 1962\); Western Auto Transports v. City of Cheyenne, 57 Wyo. 351, 120 P.2d 590 \(1942\).](#)

- 2 City of Argenta v. Keath, 130 Ark. 334, 197 S.W. 686 (1917); Metropolitan Convoy Corp. v. City of New
3 York, 2 N.Y.2d 384, 161 N.Y.S.2d 31, 141 N.E.2d 550 (1957).
 City of Flora v. Borders, 342 Ill. 208, 173 N.E. 784 (1930).

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7A Am. Jur. 2d Automobiles § 70

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III. Licensing, Taxation, and Registration

A. Vehicles

2. Power to License or Tax

c. Power of Municipalities or Political Subdivisions of the State

§ 70. Double taxation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  97, 102

Constitutional provisions prohibiting double taxation are not violated by statutes imposing a license or registration fee or tax upon motor vehicles that are already subject to an ad valorem tax.¹ Without violating constitutional provisions against double taxation, a municipality may, when authorized by statute, impose a license tax for the use of its streets by vehicles, for the purpose of revenue, although such vehicles are already taxed as property at their full value.²

In levying license fees upon automobiles for highway purposes, the state may exempt them from other taxation as against a municipality which might otherwise have levied a personal property tax on them, notwithstanding the whole revenue realized by the license tax is not to be expended on highways in the municipality.³

While there is some contrary authority,⁴ a tax upon the operation of a vehicle on the public highways is not considered double taxation when imposed upon one who has already paid an occupation tax or privilege tax upon a business involving the use of the same vehicle, because the use of the highways is a privilege separate from that of the conduct of the business,⁵ or because the imposition of a fee upon the operation of the vehicle is an exercise of the police power.⁶

A license fee imposed by a state is not rendered invalid by the fact that the owner of the vehicle is already required to pay a city license tax.⁷

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Footnotes

- 1 Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914).
- 2 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
- 3 State v. Wetz, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918).
- 4 City of Newport v. Fitzer, 131 Ky. 544, 115 S.W. 742 (1909).
Where an owner-operator has paid the tax imposed on his tractor, a trucking company may use the tractor without having to pay any further tax. *B&T Express, Inc. v. Pub. Util. Comm.*, 145 Ohio App. 3d 656, 763 N.E.2d 1241 (10th Dist. Franklin County 2001).
- 5 City of Enterprise v. Fleming, 240 Ala. 460, 199 So. 691 (1940); *Derst Baking Co. v. Mayor and Aldermen of City of Savannah*, 180 Ga. 510, 179 S.E. 763 (1935).
- 6 *Hertz Drivurself Stations v. City of Louisville*, 294 Ky. 568, 172 S.W.2d 207, 147 A.L.R. 306 (1943).
- 7 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

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7A Am. Jur. 2d Automobiles § 71

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

a. In General

§ 71. Nature of license fee or tax; distinction from property tax

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  21, 45 to 51, 65, 97 to 103

Although motor vehicles may be taxed as property, the charge made in connection with the licensing and registration of motor vehicles generally is deemed to be a license fee or tax for the privilege of using the public highways, rather than a property tax, even where it is based on the vehicle's value,¹ or where the fees go into a general fund, but are earmarked for use to maintain and improve local roads.² Because they are not property taxes, such charges are not affected by constitutional provisions governing ad valorem taxes.³ The charge is designated as an excise,⁴ a license,⁵ or a privilege⁶ tax or fee, or as a service charge.⁷ Such a tax or fee has sometimes been said to be in the nature of a toll for using the highways.⁸ In some instances, the provisions of particular statutes imposing a charge in connection with the licensing or registration of motor vehicles have been held to impose a property tax,⁹ or a combination privilege¹⁰ or license¹¹ and property tax.

While the intent of the legislature as to whether a fee exacted in connection with the licensing or registration of a motor vehicle constitutes an exercise of the state's police power or the state's taxation power is not absolutely controlling,¹² it is an important factor in determining the nature of the fee.¹³ Where the legislation creating a charge assessed for the privilege of operating overweight or overdimensional vehicles on state highways designates the charge as a license fee, it has been considered to be a license fee, which cannot be excessive in relation to the cost of administering the permit program, rather than a tax.¹⁴

Footnotes

- 1 Storaasli v. State of Minn., 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931); Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).
A fee applied to trailers used in transporting goods to and from Puerto Rico is not a tax, where the fees paid are held separately from general state funds, are dedicated exclusively to reimbursing private parties and covering administrative expenses, are collected only from those seeking the privilege of driving on state highways, and are proportioned to compensate victims for specified damages resulting from that activity. *Trailer Marine Transport Corp. v. Rivera Vazquez*, 977 F.2d 1 (1st Cir. 1992).
As to the power to license or tax motor vehicles, generally, see §§ 60 to 70.
As to methods of determining the amount of the tax, generally, see §§ 74 to 80.
- 2 Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992).
- 3 Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); State v. Mirabal, 1928-NMSC-056, 33 N.M. 553, 273 P. 928, 62 A.L.R. 296 (1928); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).
As to the taxation of property on the basis of its value, generally, see Am. Jur. 2d, State and Local Taxation §§ 642 to 647.
- 4 Storaasli v. State of Minn., 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931).
- 5 Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Commonwealth v. Boyd, 188 Mass. 79, 74 N.E. 255 (1905).
- 6 Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).
- 7 Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992).
- 8 Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915); State v. Lawrence, 108 Miss. 291, 66 So. 745 (1914); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).
- 9 Powell v. Gleason, 50 Ariz. 542, 74 P.2d 47, 114 A.L.R. 838 (1937); Walker v. Bedford, 93 Colo. 400, 26 P.2d 1051 (1933).
- 10 Raymond v. Holm, 165 Minn. 215, 206 N.W. 166 (1925).
- 11 State v. Wetz, 40 N.D. 299, 168 N.W. 835, 5 A.L.R. 731 (1918).
- 12 Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).
- 13 Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).
- 14 Com. v. Thomas Heavy Hauling, Inc., 889 S.W.2d 807 (Ky. 1994).
As to the limitation of license fees to the cost of administering the program, generally, see § 72.

7A Am. Jur. 2d Automobiles § 72

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

a. In General

§ 72. Amount of fee or tax; police power measures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles 46, 98

To the extent that a motor vehicle license or registration fee is levied under the police power, its amount is limited to that necessary for the administration of the law;¹ or, as it is sometimes said, the amount must not be disproportionate to the cost of issuing the license and the regulation of the subject matter to which it applies.² The amount of a fee imposed under the police power rests to a certain extent in the sound discretion of the legislature, which takes into consideration all the circumstances and necessities of the case, and it will be presumed that the amount of the fee is reasonable unless the contrary appears upon the face of the law itself or is established by proper evidence.³

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Footnotes

¹ Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930).

² Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Minneapolis Street Ry. Co. v. City of Minneapolis, 229 Minn. 502, 40 N.W.2d 353 (1949).

³ Vernor v. Secretary of State, 179 Mich. 157, 146 N.W. 338 (1914); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).

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III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

a. In General

§ 73. Amount of fee or tax; police power measures—Revenue measures

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles 46, 98

The amount of a motor vehicle license or registration fee or tax that may be levied for revenue purposes is largely within the control of the legislature, the legislature having plenary authority, subject to constitutional limitations, to determine the amount of the fee.¹ Such a fee or tax is not limited, as is the imposition of a fee under the police power, to the cost of administration.² Where, however, such a fee or tax is imposed by a municipality acting under taxing powers conferred upon it by the legislature, it must be reasonable in amount.³

A licensing fee that is imposed as a tax may be graduated according to the legislative determination⁴ of what is required to be collected as compensation for the use of the highways and the deterioration of the highways that results from such use.⁵ Absolute or perfect equality and uniformity in taxation are impossible, and substantial compliance with the requirements of equality and uniformity in taxation laid down by the Federal and State Constitutions is all that is required.⁶ Likewise, not all discrimination or classification is forbidden in motor vehicle licensing or registration taxation,⁷ and statutes imposing graduated motor vehicle registration or license fees or taxes in the nature of revenue measures have been sustained as valid in many cases where they were attacked on the grounds of discrimination or improper classification.⁸

Footnotes

- 1 Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).
- 2 Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915).
- 3 Waters-Pierce Oil Co. v. City of Hot Springs, 85 Ark. 509, 109 S.W. 293 (1908); Ex parte Cardinal, 170 Cal. 519, 150 P. 348 (1915).
- 4 Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).
- 5 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).
- 6 As to particular methods of determining the amount of the fee, see §§ 74 to 80.
- 7 Am. Jur. 2d, State and Local Taxation § 101.
- 8 State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).
- 9 Hendrick v. State of Maryland, 235 U.S. 610, 35 S. Ct. 140, 59 L. Ed. 385 (1915); Ex parte Schuler, 167 Cal. 282, 139 P. 685 (1914); Ex parte Kessler, 26 Idaho 764, 146 P. 113 (1915); Kane v. Titus, 81 N.J.L. 594, 80 A. 453 (N.J. Ct. Err. & App. 1911), aff'd, 242 U.S. 160, 37 S. Ct. 30, 61 L. Ed. 222 (1916).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 74. Flat fee on particular owners

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  46, 98

A flat fee for road maintenance that is imposed on all motor vehicles registered in a particular county is valid; it does violate equal protection, as the classification reasonably presumes that such owners are the persons who would most often use county roads.¹ However, an ordinance imposing a flat per-plate fee on automobile dealer and wholesaler license tags for the purpose of county road improvements is not a valid uniform service charge, despite the county's claim that better roads would mean fewer "dings" from debris and fewer paint repairs, and hence a greater profit to automobile dealers, because the asserted benefit inures to all automobiles, and not just to those driven with dealer or wholesaler tags.²

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Footnotes

¹ [Brown v. County of Horry](#), 308 S.C. 180, 417 S.E.2d 565 (1992).

² [Fairway Ford, Inc. v. County of Greenville](#), 324 S.C. 84, 476 S.E.2d 490 (1996).

7A Am. Jur. 2d Automobiles § 75

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 75. Weight of vehicle

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  28, 46, 98

A motor vehicle license or registration fee or tax which is in the nature of a revenue measure may properly be graduated according to the weight of the vehicle without rendering the fee or tax unconstitutional.¹ A statute providing for such a fee or tax is not based on unreasonable classifications, as the ground of difference between the classes has a fair and substantial relation to the object of the legislation, that is, to regulation based upon the wear and tear to which the roads are subjected by the licensees.²

A statute providing for a fee or tax based on vehicle weight is not invalid under the Commerce Clause if laid on motor carriers in interstate commerce, so long as there is no discrimination against them in contrast with those engaged in intrastate commerce.³ In graduating the amount of license or registration fees or taxes in accordance with the weight of vehicles, the state may exempt vehicles weighing less than a certain number of pounds, even though their loaded weight may be much more than that of vehicles not exempt. Such an exemption does not infringe the Equal Protection Clause of the 14th Amendment to the Federal Constitution or a similar provision of a state constitution.⁴

Where the purpose of penalties imposed under a statutory excess weight provision is to deter damage to state highways, the owners of commercial vehicles who operate those vehicles at weights in excess of the gross weights provided on their registration certificates are properly subject to penalties.⁵ Under a statute basing the licensing or registration fee upon the weight of the vehicle, issuance of a license to transport declared weights does not bar the state from prosecuting for violations of the truck weight statute.⁶

A state agency may require that trucking companies keep records by vehicle configuration and vehicle weight for the purposes of a use tax assessment, and if a trucking company fails to keep such records in a form acceptable to the department, the agency may assess the company at the highest registered maximum gross weight reported.⁷

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Footnotes

- 1 [Carley & Hamilton v. Snook](#), 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
- 2 [Carter v. State Tax Commission](#), 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).
- 3 [Bode v. Barrett](#), 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953); [Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia](#), 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939).
- 4 [Carley & Hamilton v. Snook](#), 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
- 5 [State v. Churchdale Leasing, Inc.](#), 115 N.J. 83, 557 A.2d 277 (1989).
- 6 [Department of Public Safety v. Freeman Ready-Mix Co.](#), 292 Ala. 380, 295 So. 2d 242 (1974).
As to weight limitations, generally, see §§ 210 to 215.
- 7 [D & D Trucking, Inc. v. Idaho Transp. Dept.](#), 126 Idaho 417, 885 P.2d 376 (1994).

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7A Am. Jur. 2d Automobiles § 76

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 76. Load, carrying, or seating capacity of vehicle

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 46, 98

The amount of the fee or tax to be exacted in connection with the licensing or registration of a motor vehicle may properly be graduated according to the seating¹ or load or carrying² capacity of the vehicle, at least insofar as the statute providing for the fee or tax is a revenue measure enacted under the taxing power. Such a classification of vehicles is reasonable, proper, and valid, as it is based on a uniform, fair, and practicable standard.³ In addition, a motor vehicle license or registration fee or tax based upon seating⁴ or load or carrying⁵ capacity is not invalid when laid on motor carriers in interstate commerce, if there is no discrimination against them in contrast with those engaged in intrastate commerce.

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Footnotes

- 1 Ayres v. City of Chicago, 239 Ill. 237, 87 N.E. 1073 (1909); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); Camas Stage Co. v. Kozer, 104 Or. 600, 209 P. 95, 25 A.L.R. 27 (1922).
- 2 Richmond Baking Co. v. Department of Treasury, 215 Ind. 110, 18 N.E.2d 778 (1939).
- 3 Pine Bluff Transfer Co. v. Nichol, 140 Ark. 320, 215 S.W. 579 (1919).
- 4 Northern Kentucky Transp. Co. v. City of Bellevue, 215 Ky. 514, 285 S.W. 241 (1926).

- 5 City of Chicago v. Willett Co., 344 U.S. 574, 73 S. Ct. 460, 97 L. Ed. 559 (1953); Hicklin v. Coney, 290 U.S. 169, 54 S. Ct. 142, 78 L. Ed. 247 (1933); Bode v. Barrett, 412 Ill. 204, 106 N.E.2d 521 (1952), judgment aff'd, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

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III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

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§ 77. Value or age of vehicle

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  46, 98

A.L.R. Library

[State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421](#)

Statutes providing for fees or taxes to be levied in connection with the licensing or registration of motor vehicles in accordance with the value thereof have been held valid and not unconstitutionally discriminatory.¹ However, an ad valorem tax on an entire vehicle fleet cannot be sustained in the absence of a showing that the fleet travels through the taxing jurisdiction at a fixed time and on regular routes, or that the fleet is habitually employed in that community throughout the tax year, or that it is otherwise protected or benefited by the taxing jurisdiction.²

Statutes setting forth a schedule of motor vehicle license or registration fees or taxes based upon the age of the vehicle have been held valid as against the contention that they are arbitrary and unreasonable.³

Footnotes

- 1 [Raymond v. Holm, 165 Minn. 215, 206 N.W. 166 \(1925\)](#).
An excise tax on motor vehicles is calculated on the basis of the manufacturer's list price, rather than the price at which the vehicle was sold. [Lily Transp. Corp. v. Board of Assessors of Medford, 427 Mass. 228, 692 N.E.2d 53 \(1998\)](#).
- 2 [Hemingway Transport, Inc. v. Tax Assessor of City of East Providence, 105 R.I. 411, 252 A.2d 340 \(1969\)](#).
- 3 [Dohns v. Holm, 152 Minn. 529, 189 N.W. 418 \(1922\)](#).

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III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

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§ 78. Character of vehicle or its use of highways; mileage

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  46, 98

Fees or taxes levied in connection with the registration or licensing of motor vehicles may properly be graduated in accordance with the class and character of the vehicles and their use of the public highways.¹ Registration fees for fleet vehicles are sometimes based on the mileage traveled by the entire fleet, rather than by each vehicle.² Statutes in some jurisdictions prohibit the netting of overpaid and unpaid commercial vehicle registration fees when liability for such fees is estimated.³

Observation:

Where vehicles that were registered under an automobile dealer's "U-drive-it" permit were not used for leasing or rental purposes, but rather, as customer courtesy cars or for various other business purposes, those vehicles were not eligible for alternative tax treatment that allowed the holder of a "U-drive-it" permit to pay a usage tax of 5% of the gross rental or lease charges instead of the regular motor vehicle usage tax.⁴

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Footnotes

- 1 [Waters-Pierce Oil Co. v. City of Hot Springs](#), 85 Ark. 509, 109 S.W. 293 (1908); [Ex parte Cardinal](#), 170 Cal. 519, 150 P. 348 (1915).
- 2 [American Trucking Ass'n, Inc. v. Gray](#), 288 Ark. 488, 707 S.W.2d 759 (1986), judgment vacated on other grounds, 483 U.S. 1014, 107 S. Ct. 3252, 97 L. Ed. 2d 752 (1987); [In re Protest of Freymiller, Inc.](#), 2005 OK CIV APP 94, 127 P.3d 615 (Div. 3 2005).
- 3 [In re Adway Properties, Inc.](#), 2006 OK CIV APP 14, 130 P.3d 302 (Div. 1 2006) (no exemption to the prohibition was permitted where the registrant's mileage records were accidentally destroyed).
- 4 [Bob Hook Chevrolet Isuzu, Inc. v. Com. Transp. Cabinet](#), 983 S.W.2d 488 (Ky. 1998).

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III. Licensing, Taxation, and Registration

A. Vehicles

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§ 79. Character of vehicle or its use of highways; mileage—Motor carriers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  45, 46, 49, 98

A.L.R. Library

[State regulation of motor vehicle rental \(“you-drive”\) business, 60 A.L.R.4th 784](#)

License or registration statutes may treat certain motor carriers as a special class for purposes of license or registration fees or taxes, such as motor carriers operating on fixed routes,¹ motor carriers for whose services a direct charge is made,² or motor carriers operating within the limits of municipalities.³ Classifications, in exacting license or registration fees, as between common motor carriers and private motor carriers,⁴ between motor carriers hauling products to and from farms and other motor carriers,⁵ or between motor carriers of passengers and motor carriers of property,⁶ have also been held not unconstitutionally discriminatory.

The International Registration Plan (IRP) is the interstate agreement on apportioning vehicle registration fees paid by motor carriers, developed by the American Association of Motor Vehicle Administrators.⁷ It is intended to promote uniformity, proportionality, and equitability in rental car registration among member jurisdictions.⁸ Under this plan, a state that is not

participating (after September 30, 1996) in the IRP may not establish, maintain, or enforce a commercial motor vehicle registration law, regulation, or agreement that limits the operation in that state of a commercial motor vehicle that is not registered under the laws of the state, if the vehicle is registered under the laws of a state participating in the plan.⁹ A motor carrier's IRP fees are based on actual mileage traveled by the carrier in each jurisdiction during the preceding registration year.¹⁰

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Footnotes

- 1 Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930).
- 2 Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939); Portland Van & Storage Co. v. Hoss, 139 Or. 434, 9 P.2d 122, 81 A.L.R. 1136 (1932).
- 3 Ex parte Hoffert, 34 S.D. 271, 148 N.W. 20 (1914).
As to the state's power to tax interstate motor carriers, see § 62.
- 4 Bekins Van Lines v. Riley, 280 U.S. 80, 50 S. Ct. 64, 74 L. Ed. 178 (1929); Iowa Motor Vehicle Ass'n v. Board of R.R. Com'rs, 207 Iowa 461, 221 N.W. 364, 75 A.L.R. 1 (1928), aff'd, 280 U.S. 529, 50 S. Ct. 151, 74 L. Ed. 595 (1930); Dresser v. City of Wichita, 96 Kan. 820, 153 P. 1194 (1915).
- 5 McReavy v. Holm, 166 Minn. 22, 206 N.W. 942 (1926).
- 6 State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).
- 7 49 U.S.C.A. § 31701(4).
- 8 Budget Rent A Car Corp. v. Washington State Dept. of Licensing, 100 Wash. App. 381, 997 P.2d 420 (Div. 1 2000).
- 9 49 U.S.C.A. § 31704.
- 10 In re Burlington Motor Holdings, Inc., 235 B.R. 741 (Bankr. D. Del. 1999).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

3. Nature and Amount of Tax

b. Particular Methods of Determining Amount

§ 80. Receipts or earnings of vehicle-owning entity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 46, 98

Motor carrier license or registration fees or taxes based on the gross receipts or earnings of a motor transportation company have been upheld.¹ In the case of a company engaged in interstate commerce, where such a fee or tax is based on the percentage of the gross receipts or earnings attributable to the operation of the company in the state, and thereby reasonably reflects the use made of the highways of the state, it does not violate the Commerce Clause of the United States Constitution.² However, where such fees or taxes are imposed upon interstate motor carriers based upon the entire receipts of the motor transportation company, they place an invalid burden on interstate commerce in proportion to the mileage of the company outside the state.³

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¹ [Alward v. Johnson](#), 282 U.S. 509, 51 S. Ct. 273, 75 L. Ed. 496, 75 A.L.R. 9 (1931); [Bekins Van Lines v. Riley](#), 280 U.S. 80, 50 S. Ct. 64, 74 L. Ed. 178 (1929); [Smallwood v. Jeter](#), 42 Idaho 169, 244 P. 149 (1926).

² [Public Service Coordinated Transport v. State Tax Commission](#), 6 N.Y.2d 178, 189 N.Y.S.2d 137, 160 N.E.2d 448 (1959); [ET & WNC Transp. Co. v. Currie](#), 248 N.C. 560, 104 S.E.2d 403 (1958), judgment aff'd, 359 U.S. 28, 79 S. Ct. 602, 3 L. Ed. 2d 625 (1959); [Shirk's Motor Exp. Corp. v. Messner](#), 375 Pa. 450, 100 A.2d 913 (1953).

As to the effect of the commerce clause on the state's power to tax interstate motor carriers, generally, see §§ 62 to 65.

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

4. Collection, Disbursement, and Refund of Tax

§ 81. Collection

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Automobiles  45, 48, 97, 100

A penalty may be exacted for the nonpayment of license or registration fees and taxes on the owners of motor vehicles required by statute, although the penalty is not a substitute for the fee or tax itself, so that the proper authorities may have recourse to the usual civil remedies for the collection of a debt, notwithstanding the assessment of such a penalty.¹ License or registration fees and taxes in some jurisdictions may become a lien upon the vehicle from the date on which they become due, and may be collected by seizure and sale of the vehicle.² The validity of such statutes has been upheld as against various constitutional objections.³ Under this type of statute, all taxes due on the vehicle must be paid before a repossession title may be obtained in a secured creditor's foreclosure action.⁴

Practice Tip:

When the legislature grants the motor vehicle licensing body the right to collect fees for certain out-of-state motor vehicles, it also implicitly grants the agency the power to audit the records of those within the scope of the statute.⁵

Where a statute provides that motor carrier tax liabilities abate where collection is barred by a statute of limitations, a tax warrant for delinquent motor carrier taxes becomes dormant and uncollectible after the proscribed time period has passed.⁶

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Footnotes

- 1 State ex rel. Stubbs v. Wallace, 140 Ohio St. 166, 23 Ohio Op. 399, 42 N.E.2d 893 (1942).
- 2 Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).
- 3 International Harvester Cr. Corp. v. Goodrich, 350 U.S. 537, 76 S. Ct. 621, 100 L. Ed. 681 (1956); Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).
- 4 First Federal Sav. Bank of South Dakota v. Trolinger, 441 N.W.2d 215 (S.D. 1989).
- 5 In re DeCato Bros., Inc., 149 Vt. 493, 546 A.2d 1354 (1988).
- 6 Director of Property Valuation, Div. of Property Valuation of Dept. of Revenue v. Golden Plains Exp., Inc., 13 Kan. App. 2d 48, 760 P.2d 1227 (1988).

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III. Licensing, Taxation, and Registration

A. Vehicles

4. Collection, Disbursement, and Refund of Tax

§ 82. Disbursement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 49, 101

In the absence of state constitutional limitations to the contrary, the proceeds from motor vehicle licensing or registration fees and taxes collected may be appropriated by the legislature to any public purpose, and by successive legislative acts, the appropriation of any particular fee or tax levy may be changed from one public purpose to another in the uncontrolled discretion of the legislature.¹ The fact that the statute imposing licensing or registration fees or taxes designates the particular public purpose for which the proceeds may be used instead of calling for the allocation of the proceeds to the general funds of the state does not violate due process of law.²

An annual fee exacted by the state for the registration of motor vehicles, the proceeds of which, after deductions for the support of the motor vehicle department, are devoted to the construction and maintenance of county and state roads, is not violative of the Due Process Clause as to motor vehicle owners operating principally or exclusively over city streets and paying a city license tax, the major portion of which is applied to the maintenance of city streets.³

A state may provide that a portion of license plate revenue be disbursed to qualifying political parties without violating the licensee's First Amendment rights; such a provision does not condition the availability of a public benefit on the surrender of First Amendment rights.⁴

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Footnotes

- 1 State ex rel. Brown v. Bates, 198 S.C. 430, 18 S.E.2d 346 (1941).
2 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
3 Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).
4 As to double taxation issues between state and municipalities imposing vehicle license tax or fees, see § 70.
 Libertarian Party of Indiana v. Packard, 741 F.2d 981 (7th Cir. 1984).

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III. Licensing, Taxation, and Registration

A. Vehicles

4. Collection, Disbursement, and Refund of Tax

§ 83. Refund of fees erroneously paid

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 50, 51, 102, 103

Forms

[Am. Jur. Legal Forms 2d § 33:30](#) (Application—For refund of registration fees erroneously paid)

Where motor vehicle license and registration fees are paid under protest, registration fees collected in excess of those prescribed by law should be refunded.¹ If the overpayment is made under pressure of severe statutory penalties or a disastrous effect upon one's business, such overpayment is "involuntary"; it may also be recovered to the extent that it is an overpayment.² A state is precluded from collecting registration fees in excess of the amount charged for a designated registration year, entitling a taxpayer to a refund of the amount improperly collected.³

Caution:

Subjecting of the taxpayer to a misdemeanor conviction for nonpayment of tax does not make a payment involuntary, as is required for recovery of taxes under common-law refund theory, where the taxpayer had available the alternatives of a declaratory judgment

action or making payment “under protest.”⁴ The “business compulsion” test requires a showing that the taxing statute imposes an onerous burden for nonpayment, which potentially deprives the taxpayer of the right to do business.⁵

A payer of erroneous fees generally is not entitled to a refund where payment of such fees was not coerced.⁶ However, where the legislation under which a license tax has been collected is illegal and void, those who paid the license tax are entitled to a refund,⁷ regardless of whether the payment was involuntary. Unless statutorily authorized, refunds generally are not subject to the addition of interest.⁸

Practice Tip:

In seeking a refund, the procedural requirements for presentation of tax refund claims must be observed.⁹

A state will not be allowed to remedy its collection of a tax on vehicles purchased out-of-state that is invalid under the Commerce Clause by imposing a similar tax retroactively against vehicles purchased in-state, because the state is unlikely to be able to collect the tax from a substantial percentage of owners of such vehicles; the only clear and certain remedy for the collection of such an invalid tax is a full refund to all who paid it.¹⁰

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Footnotes

- 1 Department of Motor Vehicles v. Greyhound Corp., 247 Md. 662, 234 A.2d 255 (1967); Fifth Ave. Coach Co. v. State, 73 Misc. 498, 131 N.Y.S. 62 (Ct. Cl. 1911).
- 2 People ex rel. Carpentier v. Treloar Trucking Co., 13 Ill. 2d 596, 150 N.E.2d 624 (1958).
- 3 Yellow Transp., Inc. v. State, 257 Mich. App. 602, 669 N.W.2d 553 (2003).
- 4 Private Truck Council of America, Inc. v. State, 128 N.H. 466, 517 A.2d 1150 (1986).
- 5 Texas Nat. Bank of Baytown v. Harris County, 765 S.W.2d 823 (Tex. App. Houston 14th Dist. 1988), writ denied, (July 12, 1989).
- 6 Com. v. Green Motor Lines, Inc., 208 Va. 100, 155 S.E.2d 38 (1967).
- 7 Devine v. Mantua Tp., Gloucester County, 28 N.J. Super. 299, 100 A.2d 563 (Law Div. 1953); Private Truck Council of America, Inc. v. Oklahoma Tax Com'n, 1990 OK 54, 806 P.2d 598 (Okla. 1990), cert. granted, judgment vacated on other grounds, 501 U.S. 1247, 111 S. Ct. 2882, 115 L. Ed. 2d 1048 (1991) and judgment reinstated, 1994 OK 96, 879 P.2d 137 (Okla. 1994).
- 8 Pierce County v. State, 159 Wash. 2d 16, 148 P.3d 1002 (2006).
- 9 Dean v. State, 250 Kan. 417, 826 P.2d 1372 (1992); State ex rel. Brady Motorfrate, Inc. v. State Tax Commission, 517 S.W.2d 133 (Mo. 1974).

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[Department of Revenue v. Kuhnlein, 646 So. 2d 717 \(Fla. 1994\)](#), as clarified, (Nov. 30, 1994).
As to the illegality of such a tax, see [§ 63](#).

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 84. Types of vehicles taxed, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 56, 76, 79

A.L.R. Library

[What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843](#)

Whether a particular vehicle is subject to licensing or registration requirements is dependent upon the terms of the licensing or registration enactments. Where the licensing or registration requirements are made applicable to "motor vehicles," there is usually a statutory definition of the term "motor vehicles," and only those vehicles that fall within the statutory definition, and were operated upon the highways during the licensing or registration period,¹ are subject to the licensing and registration requirements.²

An automobile that is not driven on the roads or highways, but is on stationary blocks in a garage,³ or is parked on private property for use as a storage shed,⁴ is not subject to registration.

A statute exempting certain vehicles from the motor vehicle registration provisions is not unconstitutional due to vagueness, where it is clear that the legislature's intent is to require registration of all vehicles capable of regular travel on the roads of the state.⁵

CUMULATIVE SUPPLEMENT

Cases:

A school bus is not a for hire vehicle and thus is not a motor transportation business or urban transportation business which would be subject to public utility tax rather than general business and occupation tax. [Wash. Rev. Code Ann. §§ 82.04.290\(2\), 82.16.010\(6\), 82.16.010\(12\)](#). *First Student, Inc. v. Department of Revenue*, 451 P.3d 1094 (Wash. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 Hein-Werner Corp. v. Jackson Industries, Inc., 364 Mass. 523, 306 N.E.2d 440 (1974); *Town of Ashland v. Board of Sup'r's for Hanover County*, 202 Va. 409, 117 S.E.2d 679 (1961).
- 2 *People v. Bay Ridge Operating Co.*, 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).
- 3 *Johnson v. Harris*, 374 Ill. App. 3d 473, 312 Ill. Dec. 803, 871 N.E.2d 203 (3d Dist. 2007).
- 4 *Meraz v. Farmers Ins. Exchange*, 92 Cal. App. 4th 321, 111 Cal. Rptr. 2d 804 (2d Dist. 2001), as modified on other grounds on denial of reh'g, (Oct. 5, 2001) (inoperative van).
- 5 *State v. Groves*, 232 Kan. 66, 653 P.2d 457 (1982).

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 85. Motor carriers

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 76, 77

Licensing or registration enactments frequently are made applicable to motor carriers—that is, to vehicles operated for compensation or for hire—and the problem occasionally arises as to what vehicles are included within such provisions. Where a company transacts business in which trucks are used in delivering goods to customers without any direct charge for transportation, the cost of which is added to the overhead cost of the business, such transactions are not subject to a licensing or registration enactment intended to apply only to those who transport “for compensation.”¹ However, transactions in which a company delivering goods to customers makes a direct charge to them for the cost of transportation are within the contemplation of such a statute.² A motor carrier licensing statute is applicable to a business that transports its customers' waste materials to landfills for disposal, despite the carrier's claim that collection is its primary business, and that the transportation is merely incidental to its collection activities.³

An ordinance imposing a license fee upon persons operating motor trucks “for hire or compensation” on city streets does not to impose such a fee with respect to trucks operated by a chain grocery concern merely in delivering stock to local stores from its warehouse in another city, and not transporting freight for others.⁴

The existence of an adequate and satisfactory service by motor carriers already in the area completely negates the public need and demand for added service by another carrier.⁵ However, proof of adequate market service does not generally bar entry of new applicants for a common carrier certificate of public convenience.⁶

Footnotes

- 1 [Collins-Dietz-Morris Co. v. State Corp. Com'n](#), 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).
- 2 [Collins-Dietz-Morris Co. v. State Corp. Com'n](#), 1931 OK 301, 154 Okla. 121, 7 P.2d 123, 80 A.L.R. 561 (1931).
- 3 [Browning-Ferris, Inc. v. Com.](#), 225 Va. 157, 300 S.E.2d 603 (1983).
- 4 [Kroger Grocery & Baking Co. v. City of Cynthiana](#), 240 Ky. 701, 42 S.W.2d 904 (1931).
- 5 [Application of Nebraskaland Leasing & Associates](#), 254 Neb. 583, 578 N.W.2d 28 (1998).
- As to certificates of public convenience and necessity for carriers, generally, see [Am. Jur. 2d, Carriers §§ 112 to 129](#).
- 6 [Capital City Cab Service v. Pennsylvania Public Utility Com'n](#), 138 A.3d 119 (Pa. Commw. Ct. 2016), appeal denied, [2016 WL 7407489](#) (Pa. 2016).

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III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 86. Motor carriers—Carriers of passengers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 73, 76 to 78

Municipalities generally are authorized to regulate and license taxi services within their borders.¹

In many jurisdictions, in order to receive authority to operate a motor vehicle passenger service, one must show that the public convenience and necessity require such service.² Before the responsible state agency makes a finding of public convenience and necessity, it must determine that existing service is substantially inadequate.³

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Footnotes

- 1 [Atlanta Taxicab Co. Owners Ass'n, Inc. v. City of Atlanta](#), 281 Ga. 342, 638 S.E.2d 307 (2006); [People v. Kadar](#), 14 Misc. 3d 857, 831 N.Y.S.2d 826 (N.Y. City Ct. 2006).
- 2 [Am. Jur. 2d, Carriers](#) §§ 112 to 129.
- 3 [Durango Transp., Inc. v. Colorado Public Utilities Com'n](#), 122 P.3d 244 (Colo. 2005); [In re Robert's Tours & Transp., Inc.](#), 104 Haw. 98, 85 P.3d 623 (2004).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 87. Farm vehicles

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

A.L.R. Library

[What constitutes farm vehicle, construction equipment, or vehicle temporarily on highway exempt from registration as motor vehicle, 27 A.L.R.4th 843](#)

A statute that imposes taxes on motor carriers and provides special treatment for farm vehicles is not special or local legislation in violation of a state constitutional prohibition against such legislation; the classification of farm trucks as a separate class of motor carriers is a reasonable classification and a legitimate exercise of legislative judgment, in that farmers use vehicles to transport products and supplies necessary to and produced in the course of the farming operation, while other motor carriers use roads as the primary place on which their business is conducted.¹

Under statutes that exempt “implements of husbandry,” or “farm machinery” from the registration requirements for motor vehicles, vehicles that are exempt include—

— motortrucks adapted for and used solely in delivering and applying anhydrous ammonia and liquid fertilizer²

— trucks designed and used exclusively for the purpose of carting water for irrigation on the owner's land and the land of others which the owner of the trucks had contracted to irrigate³

— tank trucks carrying oil and gasoline to tractors in the orchards and fields⁴

— farm trailers⁵

However, other vehicles are not exempt from motor vehicle registration requirements under statutory exceptions for farm vehicles, implements of husbandry, machines used in agriculture, and the like, including—

— spray rigs used in a pest control business⁶

— tank trailers used for the transportation of chemical fertilizer⁷

— three-wheeled off-road vehicles⁸

— single-axle semitractors⁹

— trucks modified by the attachment of fertilizer-spreading equipment¹⁰

— lawn tractors not used exclusively for agricultural purposes¹¹

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Footnotes

1 American Trucking Ass'n, Inc. v. Com., Transp. Cabinet, 676 S.W.2d 785 (Ky. 1984).

2 State v. Bishop, 257 Iowa 336, 132 N.W.2d 455 (1965).

3 Allred v. J.C. Engelman, Inc., 123 Tex. 205, 61 S.W.2d 75, 91 A.L.R. 417 (1933).

4 Allred v. J.C. Engelman, Inc., 123 Tex. 205, 61 S.W.2d 75, 91 A.L.R. 417 (1933).

5 State v. Herman, 87 Ohio L. Abs. 513, 181 N.E.2d 331 (Mun. Ct. 1958).

6 Sohner v. Mason, 136 Cal. App. 2d 449, 288 P.2d 616 (3d Dist. 1955).

7 Mid-South Chemical Corp. v. Carpenter, 14 Ill. 2d 514, 153 N.E.2d 72 (1958).

8 Conway v. Evans, 549 N.E.2d 1092 (Ind. Ct. App. 1990).

9 North Star Mut. Ins. Co. v. Carlson, 442 N.W.2d 848 (Minn. Ct. App. 1989).

10 State v. Conner, 13 Ohio App. 3d 179, 468 N.E.2d 320 (2d Dist. Darke County 1983).

11 People v. Canute, 8 A.D.3d 1125, 778 N.Y.S.2d 247 (4th Dep't 2004) (defendant was operating the lawn tractor en route from a bar to his home in the early morning hours).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 88. Equipment and machinery using roads only incidentally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

Construction equipment mounted on wheels ordinarily is not subject to motor vehicle licensing or registration requirements, such equipment being expressly or impliedly exempted from such requirements.¹

Under an exemption for power shovels, a front-end loader is exempt.² On the other hand, under an exemption for self-propelled cranes and road machinery, cement trucks are not included.³ Also, under an exemption for vehicles engaged exclusively in road construction, repair, and maintenance, maintenance trucks and dump trucks are not included where they are used by contractors temporarily engaged in rebuilding a road.⁴

Vehicles such as certain large items of construction equipment,⁵ motor-driven, self-propelled forklifts used exclusively on private property,⁶ portable grinding mills mounted on vehicles,⁷ and electrically operated cranes permanently mounted on an electric truck with four small wheels,⁸ have been held exempt under exemptions for vehicles only incidentally or temporarily operated on the highway. Vehicles that have been held not exempt under such provisions include a mobile home,⁹ a forklift truck,¹⁰ the trailer-like structures known as relocatable offices,¹¹ and concrete trucks.¹²

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Footnotes

- 1 People v. Bay Ridge Operating Co., 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).
2 People v. Felder, 116 N.Y.S.2d 39 (Magis. Ct. 1952).
3 State v. Groves, 232 Kan. 66, 653 P.2d 457 (1982).
4 White Bros. Const. Co. v. Oregon State Police, 246 Or. 106, 424 P.2d 221 (1967).
5 Gibbons & Reed Co. v. Dept. of Motor Vehicles, 220 Cal. App. 2d 277, 33 Cal. Rptr. 688 (1st Dist. 1963),
opinion supplemented, 220 Cal. App. 2d 277, 33 Cal. Rptr. 927 (1st Dist. 1963) and (disapproved of on
other grounds by, [Mass v. Board of Ed. of San Francisco Unified School Dist.](#), 61 Cal. 2d 612, 39 Cal. Rptr.
739, 394 P.2d 579 (1964)) and (disapproved of on other grounds by, [Olson v. Cory](#), 35 Cal. 3d 390, 197 Cal.
Rptr. 843, 673 P.2d 720 (1983)).
6 Travelers Indem. Co. v. Transport Indem. Co., 242 Cal. App. 2d 227, 51 Cal. Rptr. 724 (1st Dist. 1966)
(disapproved of on other grounds by, [Argonaut Ins. Co. v. Transport Indem. Co.](#), 6 Cal. 3d 496, 99 Cal.
Rptr. 617, 492 P.2d 673 (1972)) and (disapproved of on other grounds by, [State Farm Mut. Auto. Ins. Co.
v. Jacober](#), 10 Cal. 3d 193, 110 Cal. Rptr. 1, 514 P.2d 953 (1973)).
7 State v. Griswold, 225 Iowa 237, 280 N.W. 489 (1938).
8 People v. Bay Ridge Operating Co., 259 A.D. 260, 19 N.Y.S.2d 140 (1st Dep't 1940).
9 Newell v. National Bank of Alaska, 646 P.2d 224, 34 U.C.C. Rep. Serv. 767, 27 A.L.R.4th 835 (Alaska 1982).
10 Davis v. Pine Mountain Lumber Co., 273 Cal. App. 2d 218, 77 Cal. Rptr. 825 (3d Dist. 1969).
11 Mobilease Corp. v. County of Orange, 42 Cal. App. 3d 461, 116 Cal. Rptr. 864 (4th Dist. 1974).
12 Crown Concrete Co. v. Conkling, 247 Iowa 609, 75 N.W.2d 351 (1956); Davidson v. Hare, 351 Mich. 4,
87 N.W.2d 131 (1957).

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A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 89. Motorcycles, dirt bikes, all-terrain vehicles, and the like

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

Motorcycles generally are subject to motor vehicle licensing or registration statutes,¹ with some licensing or registration statutes making specific requirements as to motorcycles.²

A dirt bike (a motorcycle designed for off-road use) is a vehicle subject to the motor vehicle registration requirements when it is operated on a public highway, and the fact that the dirt bike cannot be registered because it lacks the required safety equipment does not excuse it from the registration requirement.³

All-terrain vehicles are not subject to registration if used on an easement providing a right-of-way for access to property.⁴

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Footnotes

¹ [Nationwide Mut. Ins. Co. v. Worthey](#), 314 Ark. 185, 861 S.W.2d 307 (1993).

² [Landwehr v. Continental Life Ins. Co.](#), 159 Md. 207, 150 A. 732, 70 A.L.R. 1249 (1930).

³ [Com., Dept. of Transp., Bureau of Driver Licensing v. Lear](#), 151 Pa. Commw. 138, 616 A.2d 185 (1992).

⁴ [Northern Sec. Ins. Co., Inc. v. Rossitto](#), 171 Vt. 580, 762 A.2d 861 (2000).

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Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

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5. Types of Vehicles Taxed; Exemptions and Definitions

§ 90. Vehicles of nonresidents

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 37, 78

It is customary for a state to permit nonresidents to operate their vehicles for limited periods within its boundaries without complying with its licensing or registration requirements, where such vehicles have been properly licensed or registered in the state of domicil of the owners.¹ Reciprocal provisions are contained in state statutes, basing the exemption for nonresidents on the condition that the state of the nonresident make a similar provision as to residents of the state.² Equal protection of the law is not denied by exempting nonresidents from a state tax on motor vehicles for the privilege of using the highways, provided that the states of their residence reciprocate and grant a like exemption to citizens of the taxing state.³

A question of construction exists as to who is a resident or nonresident within the meaning of statutes exempting from motor vehicle licensing or registration requirements vehicles owned by nonresidents. Foreign corporations doing business in a state are not considered to be nonresidents within the meaning of such statutes,⁴ the effect of such an interpretation being to narrow the exemption in reference to motor carriers for hire.⁵ Nor is a domestic corporation doing business in the state whose motor vehicles are based in another considered to be a nonresident within the meaning of such statutes; rather, it must comply with the licensing or registration laws of the state of its incorporation insofar as such vehicles are operated upon the highways of that state.⁶ Nonresidents who have accepted employment or are engaged in any trade, profession, or occupation in the state are sometimes not entitled to exemptions from licensing or registration requirements accorded nonresidents.⁷

In some jurisdictions, a foreign rental car agency that owns a vehicle that is registered and rented to an operator out-of-state does not have a duty to register the vehicle in a state to which the operator drives the vehicle.⁸

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Footnotes

- 1 [U.S. v. Mounts](#), 35 F.3d 1208 (7th Cir. 1994).
- 2 [Shuba v. Greendonner](#), 271 N.Y. 189, 2 N.E.2d 536 (1936).
- 3 [Bode v. Barrett](#), 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).
- 4 [Gondek v. Cudahy Packing Co.](#), 233 Mass. 105, 123 N.E. 398 (1919).
- 5 [Reeves v. Deisenroth](#), 288 Ky. 724, 157 S.W.2d 331, 138 A.L.R. 1493 (1941).
- 6 [State v. Garford Trucking](#), 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950).
- 7 [Harper v. England](#), 124 Fla. 296, 168 So. 403 (1936).
- 8 [Lopes v. Phillips](#), 680 A.2d 65 (R.I. 1996).

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5. Types of Vehicles Taxed; Exemptions and Definitions

§ 91. Governmental vehicles; vehicles transporting mail

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

The fact that a motor vehicle is owned by a governmental unit or is used in connection with governmental services does not necessarily exempt it from motor vehicle licensing or registration requirements.¹ The state may impose a license fee or tax upon the motor vehicles of a municipality.² One contracting to transport United States mail is not absolved from the duty of obtaining state licenses for motor trucks used in the business.³

However, statutes relating to motor vehicle licensing or registration frequently exempt public or governmental vehicles or vehicles engaged in the performance of governmental services. For example, the state may properly exempt from its requirements as to the licensing or registration of motor vehicles those vehicles owned and operated by the federal government,⁴ and the right of a federal instrumentality to operate its vehicles on state highways in the conduct of its business without paying the state motor vehicle license tax has been judicially recognized.⁵ The exemption for vehicles used exclusively in carrying United States mail from the operation of a statute imposing a tax for revenue upon motor vehicles operating for hire is justified by the public interest.⁶ An exemption of the gross weight of United States mail transported in any motor vehicle from a ton-mile tax imposed upon contract motor carriers and private motor carriers for hire is not inimical to a constitutional requirement that all general laws have uniform operation.⁷

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Footnotes

- 1 Ex parte Marshall, 75 Fla. 97, 77 So. 869 (1918).
2 State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414 (1922).
3 State v. Johnson, 75 Mont. 240, 243 P. 1073 (1926); State v. Wiles, 116 Wash. 387, 199 P. 749, 18 A.L.R.
1163 (1921).
4 State v. Preston, 103 Or. 631, 206 P. 304, 23 A.L.R. 414 (1922).
5 Roberts v. Federal Land Bank of New Orleans, 189 Miss. 898, 196 So. 763 (1940).
6 Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).
7 Public Service Commission of Wyoming v. Grimshaw, 49 Wyo. 158, 53 P.2d 1, 109 A.L.R. 534 (1935).

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A. Vehicles

5. Types of Vehicles Taxed; Exemptions and Definitions

§ 92. Vehicles of military personnel and veterans

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West's Key Number Digest

West's Key Number Digest, [Automobiles](#)  37, 78

The Servicemembers Civil Relief Act¹ provides that for purposes of taxation, including licenses, fees, or excises imposed with respect to motor vehicles and their use, one is not deemed to have lost or acquired a residence or domicil in any state or political subdivision solely by reason of being absent therefrom in compliance with military orders, or to have acquired a residence in any other state or political subdivision while being so absent, provided that the license, fee, or excise required by the state of which the person is a resident or in which he or she is domiciled has been paid.² A member of the Armed Forces who is on duty in a state or political subdivision thereof is not exempt from paying license fees where he or she has not paid the license fees of the domicil, but the host state may not impose taxes other than licenses, fees, or excises even though the member has not paid corresponding taxes to his or her home state.³ On the other hand, if the armed services member satisfies the requirements of another state with regard to the licensing and registration of a motor vehicle, he or she cannot be required to pay a registration fee to his or her domiciliary state.⁴

The fact that a motor vehicle is owned by a veteran who is exempted from the payment of property taxes does not relieve him or her of the obligation of paying a motor vehicle license tax.⁵

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Footnotes

¹ [50 U.S.C.A. §§ 3901 to 4043](#).

- 2 50 U.S.C.A. § 4001.
3 California v. Buzard, 382 U.S. 386, 86 S. Ct. 478, 15 L. Ed. 2d 436 (1966).
4 People v. Buzard, 61 Cal. 2d 833, 40 Cal. Rptr. 681, 395 P.2d 593 (1964), judgment aff'd, 382 U.S. 386,
86 S. Ct. 478, 15 L. Ed. 2d 436 (1966).
5 Ingels v. Riley, 5 Cal. 2d 154, 53 P.2d 939, 103 A.L.R. 1 (1936).

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III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 93. Name in which vehicle is registered, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 31 to 36, 78, 79, 86, 105

Forms

[Am. Jur. Legal Forms 2d § 33:13 \(Power of attorney—To register or transfer motor vehicle\)](#)

Under motor vehicle licensing and registration statutes, the registration of a motor vehicle in the name of one other than the owner is illegal,¹ and a motor vehicle so registered is unlawfully upon the highway.²

The courts traditionally have been quite strict in their requirement as to the form of the name used to identify the owner of a motor vehicle under the licensing or registration laws.³ For example, the registration of a motor vehicle in the name of a child of a dealer, where the child actually conducts the business as agent for his or her father, is illegal,⁴ as is the registration of a motor vehicle in the maiden name of a married owner.⁵ Where the application for registration of a motor vehicle properly sets forth the name of the owner, but the registration is not completed until after the owner's death, the registration of such vehicle in the name of the deceased owner is illegal.⁶ However, the word "owner" as used in such statutes is not a technical term. It is not confined to the sole owner of, or a person having an absolute right in, a motor vehicle,⁷ and in some circumstances at least

may apply to a part owner⁸ or a conditional purchaser⁹ of a motor vehicle. For some purposes, a person may be considered the owner of a vehicle even though he or she does not have legal title.¹⁰

Where spouses own a vehicle, the fact that one of the spouses is excluded from the automobile liability policy does not prevent that spouse from obtaining registration in his or her own name.¹¹

Caution:

Registration of a vehicle in a particular name creates a rebuttable presumption in some jurisdictions that the named entity is the owner of the vehicle.¹²

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Footnotes

- 1 *Balian v. Ogassian*, 277 Mass. 525, 179 N.E. 232, 78 A.L.R. 1021 (1931).
- 2 *Love v. Worcester Consol. St. Ry. Co.*, 213 Mass. 137, 99 N.E. 960 (1912).
- 3 *Bacon v. Boston Elevated Ry. Co.*, 256 Mass. 30, 152 N.E. 35, 47 A.L.R. 1100 (1926).
- 4 *Gould v. Elder*, 219 Mass. 396, 107 N.E. 59 (1914).
- 5 *Bacon v. Boston Elevated Ry. Co.*, 256 Mass. 30, 152 N.E. 35, 47 A.L.R. 1100 (1926).
- 6 *Fairbanks v. Kemp*, 226 Mass. 75, 115 N.E. 240 (1917).
- 7 *Burns v. Winchell*, 305 Mass. 276, 25 N.E.2d 752 (1940).
- 8 § 94.
- 9 § 97.
- 10 *Government Employees Ins. Co. v. Superior Court*, 79 Cal. App. 4th 95, 93 Cal. Rptr. 2d 820 (4th Dist. 2000).
- 11 *Neale v. Wright*, 322 Md. 8, 585 A.2d 196 (1991).
- 12 *Employers Cas. Co. v. Employers Commercial Union Ins. Co.*, 632 F.2d 1215 (5th Cir. 1980); *Arneson v. Integrity Mut. Ins. Co.*, 344 N.W.2d 617 (Minn. 1984); *Perry v. Breland*, 16 S.W.3d 182 (Tex. App. Eastland 2000).

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III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 94. Part owners

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 32, 33, 79

Statutes that make no specific provision as to the registration of jointly owned motor vehicles, but require merely that registration be in the name of the owner, are not construed as absolutely excluding a valid registration in the name of a part owner.¹ The fact that a motor vehicle is registered in the name of a person who is only part owner does not invalidate the registration—his or her rights are protected so long as he or she operates or is present in the vehicle.² For registration by a part owner to be lawful, it must be in the name of the part owner operating and having control of the car.³

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Footnotes

1 [Burns v. Winchell](#), 305 Mass. 276, 25 N.E.2d 752 (1940).

2 [Harlow v. Sinman](#), 241 Mass. 462, 135 N.E. 553 (1922).

3 [Balian v. Ogessian](#), 277 Mass. 525, 179 N.E. 232, 78 A.L.R. 1021 (1931).

7A Am. Jur. 2d Automobiles § 95

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Automobiles and Highway Traffic

Barbara J. Van Arsdale, J.D.; Keith A. Braswell, J.D., of the staff of the National Legal Research Group, Inc.; George Blum, J.D.; John Bourdeau, J.D.; Paul M. Coltoff, J.D.; John A. Gebauer, J.D.; Noah J. Gordon, J.D.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Karl Oakes, J.D.; and Eric C. Surette, J.D.

III. Licensing, Taxation, and Registration

A. Vehicles

6. Name in Which Vehicle Is Registered

§ 95. Partnerships

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Automobiles](#) 32, 33, 78, 79

In jurisdictions in which a partnership is regarded as a legal entity distinct from the persons who comprise it,¹ a partnership that owns or controls a motor vehicle should register it in the partnership name, and the registration of a motor vehicle owned by a partnership in the name of a single partner is illegal.²

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Footnotes

¹ [Am. Jur. 2d, Partnership §§ 5 to 7.](#)

² [Kilduff v. Boston Elevated Ry. Co.](#), 247 Mass. 453, 142 N.E. 98 (1924).

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